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OF THE STATE OF MONTANA
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Table of Contents

Volume II

CHAPTER NO. 356

[SB 260]

AN ACT EXEMPTING CERTAIN INSURERS FROM UNFAIR CLAIMS SETTLEMENT PRACTICE REQUIREMENTS; EXEMPTING CAPTIVE INSURANCE ENTITIES EXCEPT FOR RISK RETENTION GROUPS; AND AMENDING SECTIONS 33-18-242 AND 33-28-207, MCA.

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

Section 1. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201.

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. Exemplary damages may also be assessed in accordance with 27-1-221.

(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(7) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(8) As used in this section, ~~an~~ *the term* "insurer*"* ~~includes~~ *does not include* a person, firm, or corporation utilizing ~~self-insurance~~ *a captive insurance company* to pay claims made against ~~them~~ *it, unless that captive insurance group is a captive risk retention group*."

Section 2. 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, 33-1-604 through 33-1-606, 33-2-112, 33-3-431, 33-18-201, 33-18-203, *and* 33-18-205~~, and 33-18-242~~;

(e) 33-18-242 only applies to captive risk retention group insurers;

~~(e)~~*(f)* 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)~~*(g)* 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."

Approved May 2, 2023

CHAPTER NO. 357

[SB 262]

AN ACT REVISING LAWS RELATED TO LICENSING PREEMPTION BY THE STATE; PROHIBITING A LOCAL GOVERNMENT FROM REQUIRING A LICENSE IN CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 7-1-111, MCA.

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

Section 1. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); ~~or~~

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1)*; or*

(26) any power to require additional licensing when the state is the original issuer of the license."

Approved May 2, 2023

CHAPTER NO. 358

[SB 263]

AN ACT REVISING AIRPORT AUTHORITY CONTRACTING LAWS; ALLOWING AUTHORITIES TO ENTER INTO CERTAIN CONTRACTS, LEASES, AND ARRANGEMENTS FOR 50 YEARS; AND AMENDING SECTION 67-11-211, MCA.

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

Section 1. Section 67-11-211, MCA, is amended to read:

"**67-11-211. Granting of operation and use privileges.** (1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed ~~40~~ *50* years with any persons:

(a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility of or space in the airport or air navigation facility for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

(c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.

(2) In each case, the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service; provided that the public may not be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion or facility of the airport or air navigation facility.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may by contract,

lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed ~~40~~ *50* years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that a person may not be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsections (1) and (2)."

Approved May 2, 2023

CHAPTER NO. 359

[SB 264]

AN ACT REVISING LAWS RELATING TO AIRPORT ALL-BEVERAGES LICENSES; ALLOWING A LICENSEE TO LEASE THE AIRPORT ALL-BEVERAGES LICENSE TO UP TO THREE INDIVIDUALS OR ENTITIES; ESTABLISHING PROVISIONS FOR LICENSEES; AMENDING AN AIRPORT'S MINIMUM TOTAL ANNUAL PASSENGERS TO QUALIFY FOR THE LICENSE; ELIMINATING CURBSIDE PICKUP; AND AMENDING SECTIONS 16-3-312 AND 16-4-208, MCA.

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

Section 1. Section 16-3-312, MCA, is amended to read:

"**16-3-312. Curbside pickup.** (1) Licensed entities and agency liquor stores provided under subsection (3) may offer curbside pickup.

(2) Curbside pickup constitutes the sale of alcoholic beverages in original packaging, prepared servings, or growlers that was ordered online or through the phone for pickup from the licensee or agency liquor store during normal business hours and within 300 feet of the licensed premises or agency liquor stores, including a drive-through window. Curbside pickup is intended for consumption somewhere other than the pickup location. It is not intended for delivery to residences or other businesses, including but not limited to restaurants or hotels.

(3) This only applies to licenses issued under 16-3-213, 16-3-214, 16-3-411, 16-4-105, 16-4-110, 16-4-115, 16-4-201, ~~16-4-208,~~ 16-4-209, 16-4-213, 16-4-312, and 16-4-420, and agency liquor stores under 16-2-101."

Section 2. Section 16-4-208, MCA, is amended to read:

"**16-4-208. Airport all-beverages license.** (1) The department of revenue shall issue one all-beverages license, to be known as a public airport all-beverages license, for use at each publicly owned airport served by scheduled airlines and enplaning and deplaning a minimum total of ~~20,000~~ *5,000* passengers annually when:

(a) application is made;

(b) upon finding that this license is justified by public convenience and necessity, including the convenience and necessity of the public traveling by scheduled airlines; and

(c) following a hearing as provided in 16-4-207.

(2) Application must be made by the agency owning and operating the airport. The agency owning and operating the airport may lease the airport all-beverages license to ~~an individual or entity~~ *up to three individuals or entities* approved by the department.

(3) The lessee of an airport all-beverages license may purchase alcohol and the lease may be based on the percentage of sales of alcoholic beverages by the lessee. The lessee has the same rights and privileges as an airport all-beverage

license issued under this section, and, in the event of a violation, is subject to reprimand, suspension of the lessee's alcohol operations, or a civil penalty not to exceed $1,500 as provided for a retail licensee under 16-4-406.

~~(3)~~*(4)* A public airport all-beverages license and all retail alcoholic beverage sales under it are subject to all statutes and rules governing all-beverages licenses*, except for the provisions for curbside pickup as allowed under 16-3-312*.

~~(4)~~*(5)* The department of revenue shall issue a public airport all-beverages license to a qualified applicant regardless of the number of all-beverages licenses already issued within the all-beverages license quota area in which the airport is situated.

~~(5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in original packaging, prepared servings, or growlers.~~"

Approved May 2, 2023

CHAPTER NO. 360

[SB 269]

AN ACT ESTABLISHING THE LITIGATION FINANCING TRANSPARENCY AND CONSUMER PROTECTION ACT; REQUIRING THE REGISTRATION OF LITIGATION FINANCERS; ENSURING THE PUBLIC TRANSPARENCY OF PERSONS INVOLVED IN LITIGATION FINANCING ACTIVITIES; ESTABLISHING CONSUMER PROTECTIONS AND REGULATING THE PRACTICE OF LITIGATION FINANCING; ESTABLISHING MINIMUM STANDARDS AND DISCLOSURES FOR LITIGATION FINANCING CONTRACTS; REQUIRING THE DISCLOSURE IN A CIVIL ACTION OF ANY LITIGATION FINANCING TRANSACTION AND LITIGATION FINANCING CONTRACT; CREATING CERTAIN EXEMPTIONS; AUTHORIZING THE SECRETARY OF STATE TO ESTABLISH ADMINISTRATIVE RULES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Short title. [Sections 1 through 11] may be cited as the "Litigation Financing Transparency and Consumer Protection Act".

Section 2. Definitions. For the purposes of [sections 1 through 11], the following definitions apply:

(1) "Consumer" means any individual who resides, is present, or is domiciled in this state or who is or may become a plaintiff, claimant, or complainant in a civil action or an administrative proceeding or in pursuit of any claim or cause of action in this state.

(2) "Entity" means any domestic or foreign corporation, partnership, limited partnership, limited liability company, trust, fund, plan, or any other business, enterprise, association, or organization of any kind or nature.

(3) "Legal representative" means any attorney, group of attorneys, or law firm duly licensed and authorized to practice law and to represent a consumer in a civil action, administrative proceeding, or claim to recover damages in this state.

(4) "Litigation financer" means any person or group of persons engaged in, or formed, created, or established for the purpose of engaging in, the business of litigation financing or any other business or economic activity in which a

person or group of persons receive consideration of any kind in exchange for providing litigation financing.

(5) "Litigation financing" means the financing, funding, advancing, or loaning of money to pay for fees, costs, expenses, or any other sums arising from or in any manner related to a civil action, administrative proceeding, claim, or cause of action, if the financing, funding, advancing, or loaning of money is provided by any person other than a person who is:

(a) a party to the civil action, administrative proceeding, claim, or cause of action;

(b) a legal representative engaged, directly or indirectly through another legal representative, to represent a party in the civil action, administrative proceeding, claim, or cause of action; or

(c) an entity or insurer with a preexisting contractual obligation to indemnify or defend a party to the civil action, administrative proceeding, claim, or cause of action.

(6) (a) "Litigation financing contract" means a written contract in which a person agrees to provide litigation financing to any person in conjunction with a civil action or an administrative proceeding or in pursuit of any claim or cause of action in this state in consideration for:

(i) the payment of interest, fees, or other consideration to the person providing the litigation financing; or

(ii) granting or assigning to the person providing the litigation financing a right to receive payment from the value of any proceeds or other consideration realized from any judgment, award, settlement, verdict, or other form of monetary relief any consumer, legal representative, or other person may receive or recover in relation to the civil action, administrative proceeding, claim, or cause of action.

(b) The term does not include any agreement, contract, or engagement of a legal representative to render legal services to a consumer on a contingency fee basis, including the advancement of legal costs by the legal representative, in which the services or costs are provided to or on behalf of a consumer by the legal representative representing the consumer in the civil action, administrative proceeding, claim, or cause of action.

(7) "Person" includes an individual and an entity.

(8) "Regulated lender" has the same meaning as in 31-1-111.

(9) "Secretary" means the secretary of state provided for in Title 2, chapter 15, part 4.

Section 3. Registration. (1) A person may not engage in litigation financing in this state unless the person is registered with the secretary of state as a litigation financer pursuant to [sections 1 through 11].

(2) If the person registering as a litigation financer is an entity:

(a) the entity must be active and in good standing as reflected in the office of the secretary of state; and

(b) the entity's articles of incorporation, charter, articles of organization, certificate of limited partnership, or other organizational or governing document must contain a statement that the entity has the power to engage in the business of litigation financing and is designated as a litigation financer pursuant to [sections 1 through 11].

(3) To register as a litigation financer, a person shall file a registration statement with the secretary of state setting forth the following information:

(a) the legal name of the litigation financer;

(b) the physical street address and mailing address of the litigation financer;

(c) a telephone number or e-mail address through which the litigation financer may be contacted;

(d) the physical street address and mailing address of the licensed financer's registered office and the name of the registered agent at the registered office who is authorized to accept service of process on behalf of the licensed financer; and

(e) any other information the secretary of state considers necessary.

(4) If the person seeking to register as a litigation financer is an entity, the following information must be set forth in the registration statement with respect to each person that, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 5% or more of the voting securities of the litigation financer:

(a) the legal name, physical street address, and mailing address of each person;

(b) if the person is an individual:

(i) the individual's occupation;

(ii) any offices and positions held with the litigation financer during the past 5 years; and

(iii) any conviction of a crime other than misdemeanor traffic violations during the past 10 years;

(c) if the person is an entity:

(i) the nature of the entity's business operations, if any, during the past 5 years or a description of the business intended to be done by the entity and the entity's subsidiaries, if any; and

(ii) a list of all individuals who are or who have been selected to become directors or officers of the entity and each subsidiary of the entity. The list must include for each individual the information required by subsection (2).

(5) A litigation financer subject to registration under [sections 1 through 11] shall file an amended registration within 30 days whenever the information contained in the most recently filed registration changes or becomes inaccurate or incomplete in any respect.

(6) The secretary of state is authorized to prescribe the forms and the filing fees the secretary of state considers necessary for the purposes of [sections 1 through 11].

(7) All documents and information filed with the secretary of state pursuant to this section are public records.

(8) 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 this chapter; or

(b) the information contained in the document is correct or incorrect.

Section 4. Litigation financing protections. (1) A litigation financer may not:

(a) pay or offer commissions, referral fees, rebates, or other forms of consideration to any person in exchange for referring a consumer to a litigation financer;

(b) accept any commissions, referral fees, rebates, or other forms of consideration from any person providing any goods or rendering any services to the consumer;

(c) charge a rate of interest that exceeds that rate of interest allowed under 31-1-107;

(d) receive or recover any payment that exceeds 25% of the amount of any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, administrative proceeding, claim, or cause of action that is the subject of the litigation contract;

(e) advertise false or misleading information regarding its products or services;

(f) refer or require any consumer to hire or engage any person providing any goods or rendering any services to the consumer;

(g) fail to promptly deliver a fully completed and signed litigation financing contract to the consumer and the consumer's legal representative;

(h) attempt to secure a remedy or obtain a waiver of any remedy, including but not limited to compensatory, statutory, or punitive damages, that the consumer may or may not be entitled to pursue or recover otherwise;

(i) offer or provide legal advice to the consumer;

(j) assign, including securitizing, a litigation financing contract in whole or in part;

(k) report a consumer to a credit reporting agency if insufficient funds remain to repay the litigation financer in full from the proceeds received from any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, administrative proceeding, claim, or cause of action that is the subject of the litigation financing contract; and

(l) demand, request, receive, or exercise any right to influence, affect, or otherwise make any decision in the handling, conduct, administration, litigation, settlement, or resolution of any civil action, administrative proceeding, claim, or cause of action in which the litigation financer has provided litigation financing. All rights remain solely with the consumer and the consumer's legal representative.

(2) A person who provides any goods or renders any services to the consumer may not have a financial interest in litigation financing and may not receive any commissions, referral fees, rebates, or other forms of consideration from any litigation financer or the litigation financer's employees, owners, or affiliates.

Section 5. Litigation financing contract -- disclosures. (1) The terms and conditions of a litigation financing contract must be set forth in a fully completed written contract with no terms or conditions omitted. The litigation financing contract must contain all terms and conditions at the time it is signed by any party to the litigation financing contract.

(2) On execution of a litigation financing contract, a litigation financer may not amend the terms or conditions of the litigation financing contract without full disclosure to and the prior written consent of all parties to the litigation financing contract.

(3) A litigation financing contract must set forth the name, physical street address, and mailing address of the litigation financer on page 1 of the litigation financing contract.

(4) A litigation financing contract must contain the following disclosures that constitute material terms and conditions of the litigation financing contract and must be typed in at least 14-point bold font and be placed clearly and conspicuously immediately above the consumer's signature line in the litigation financing contract:

"IMPORTANT DISCLOSURES -- PLEASE READ CAREFULLY

1. Right to Cancellation: You may cancel this litigation financing contract without penalty or further obligation within five (5) business days from the date you sign this contract or the date you receive financing from the litigation financer, whichever date is later. You may cancel by sending a notice of cancellation to the litigation financer and returning to the litigation financer any funds received from the litigation financer at the litigation financer's address set forth on page 1 of this contract.

2. The maximum amount the litigation financer may receive or recover from any ~~contingent~~ payment may not exceed twenty-five percent (25%) of the amount of any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, administrative proceeding, claim, or cause of action that is the subject of this litigation contract.

3. The litigation financer agrees that it has no right to, and will not demand, request, receive, or exercise any right to, influence, affect, or otherwise make any decision in the handling, conduct, administration, litigation, settlement, or resolution of your civil action, administrative proceeding, claim, or cause of action. All of these rights remain solely with you and your legal representative.

4. If there is no recovery of any money from your civil action, administrative proceeding, claim, or cause of action, or if there is not enough money to satisfy in full the portion assigned to the litigation financer, you will not owe anything in excess of your recovery.

5. You are entitled to a fully completed contract with no terms or conditions omitted prior to signing. Before signing this contract, you should read the contract completely and consult an attorney."

(5) If the consumer is represented by a legal representative in the civil action, administrative proceeding, claim, or cause of action that is the subject of the litigation financing contract, the legal representative shall acknowledge in the contract that the legal representative and the legal representative's employer and employees have not received or paid a referral fee or any other consideration from or to the litigation financer and have no obligation to do so in the future.

(6) If the consumer's legal representative is a party to a litigation financing contract related to the consumer's civil action, administrative proceeding, claim, or cause of action that is the subject of the litigation financing contract, the legal representative shall disclose and deliver the litigation financing contract to the consumer. Following this disclosure and delivery, the consumer shall sign an acknowledgement that the consumer has read and understands the terms and conditions of the litigation financing contract and the consumer must be provided with a copy of the acknowledgment.

Section 6. Disclosure and discovery of litigation financing contracts. (1) Except as otherwise stipulated or ordered by a court of competent jurisdiction, a consumer or the consumer's legal representative shall, without awaiting a discovery request, disclose and deliver to the following persons the litigation financing contract:

(a) each party to the civil action, administrative proceeding, claim, or cause of action, or to each party's legal representative;

(b) the court, agency, or tribunal in which the civil action, administrative proceeding, claim, or cause of action may be pending; and

(c) any known person, including an insurer, with a preexisting contractual obligation to indemnify or defend a party to the civil action, administrative proceeding, claim, or cause of action.

(2) The disclosure obligation under subsection (1) exists regardless of whether a civil action or an administrative proceeding has commenced.

(3) The disclosure obligation under subsection (1) is a continuing obligation, and within 30 days of entering into a litigation financing contract or amending an existing litigation financing contract, the consumer or the consumer's legal representative shall disclose and deliver any new or amended litigation financing contracts.

(4) The existence of the litigation financing contract and all participants or parties to a litigation financing contract are permissible subjects of discovery in any civil action, administrative proceeding, claim, or cause of action to

which litigation financing is provided under the litigation financing contract, regardless of whether a civil action or an administrative proceeding has commenced.

Section 7. Exemptions. [Sections 1 through 11] do not apply to the following:

(1) a nonprofit entity that provides litigation financing, directly or indirectly, for the benefit of the nonprofit or one or more of its members without receiving, in consideration for the litigation financing:

(a) the payment of interest, fees, or other consideration; or

(b) except for in-house counsel of the nonprofit, any right to recovery or payment from the amount of any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, administrative proceeding, claim, or cause of action;

(2) any litigation financing provided by an entity engaged in commerce or business activity, but only if the entity does not:

(a) charge or collect any interest, fees, or other consideration;

(b) retain or receive any financial interest in the outcome of the civil action, administrative proceeding, claim, or cause of action; or

(c) receive any right to recovery or payment from the amount of any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, administrative proceeding, claim, or cause of action; or

(3) a regulated lender that does not receive, in consideration for loaning money to any person, a right to receive payment from the value of any proceeds or other consideration realized from any judgment award, settlement, verdict, or other form of monetary relief any person may receive or recover in relation to any civil action, administrative proceeding, claim, or cause of action.

Section 8. Class actions. [Sections 1 through 11] apply to any civil action filed or certified as a class action in which litigation financing is provided. A litigation financer owes a fiduciary duty to all class members or intended beneficiaries of a certified class and shall act in a manner consistent with the litigation financer's fiduciary duty throughout the civil action. In addition to the disclosure requirements set forth in [sections 1 through 11], the legal representative of the putative class shall disclose to all parties, putative class members, and the court any legal, financial, or other relationship between the legal representative and the litigation financer. A class member is entitled to receive from the class counsel a true and correct copy of the litigation financing contract on request.

Section 9. Joint and several liability for costs. A litigation financer is jointly and severally liable for any award or order imposing or assessing costs or monetary sanctions against a consumer arising from or relating to any civil action, administrative proceeding, claim, or cause of action for which the litigation financer is providing litigation financing.

Section 10. Regulatory oversight -- rulemaking. The secretary of state is authorized to adopt rules and other policies in overseeing the practice of litigation financing consistent with [sections 1 through 11].

Section 11. Act violation -- unenforceable contract. (1) Any violation of [sections 1 through 11] by the litigation financer renders the litigation financing contract unenforceable by the litigation financer or any successor-in-interest to the litigation financing contract.

(2) If a litigation financer charges a rate of interest that exceeds the rate of interest allowed under 31-1-107, the litigation financer shall be subject to a penalty for usury and an action to recover excessive interest as authorized under 31-1-108.

Section 12. Codification instruction. [Sections 1 through 11] are intended to be codified as a new chapter in Title 31, and the provisions of Title 31 apply to [sections 1 through 11].

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 January 1, 2024.

Section 15. Applicability. [This act] applies to any civil action or administrative proceeding pending on or commenced after [the effective date of this act].

Approved May 2, 2023

CHAPTER NO. 361

[SB 270]

AN ACT PROTECTING EMPLOYEE AND JOB APPLICANT RIGHTS TO LEGAL EXPRESSIONS OF FREE SPEECH, INCLUDING POSTS MADE ON SOCIAL MEDIA; PROVIDING THAT TERMINATION OF AN EMPLOYEE BASED ON THE EMPLOYEE'S LEGAL EXPRESSION OF FREE SPEECH, INCLUDING BUT NOT LIMITED TO STATEMENTS MADE ON SOCIAL MEDIA, IS DISCRIMINATION AND SUBJECT TO WRONGFUL DISCHARGE LAWS; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 39-2-307 AND 39-2-904, MCA.

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

Section 1. Section 39-2-307, MCA, is amended to read:

"**39-2-307. Employer access limited regarding personal social media account of employee or job applicant -- conditions for exceptions -- employer retaliation prohibited -- penalties.** (1) Except as provided in subsection (2), an employer or employer's agent may not require or request an employee or an applicant for employment to:

(a) disclose a user name or password for the purpose of allowing the employer or employer's agent to access a personal social media account of the employee or job applicant;

(b) access personal social media in the presence of the employer or employer's agent; or

(c) divulge any personal social media or information contained on personal social media.

(2) An employee shall provide, if requested, to an employer or employer's agent the employee's user name or password to access personal social media when:

(a) (i) the employer has specific information about an activity by the employee that indicates work-related employee misconduct or criminal defamation, as provided in 45-8-212;

(ii) the employer has specific information about the unauthorized transfer by the employee of the employer's proprietary information, confidential information, trade secrets, or financial data to a personal online account or personal online service; or

(iii) an employer is required to ensure compliance with applicable federal laws or federal regulatory requirements or with the rules of self-regulatory organizations as defined in section 3(a)(26) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)(26); and

(b) an investigation is under way and the information requested of the employee is necessary to make a factual determination in the investigation.

(3) Nothing in this section:

(a) limits an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement for an employee to disclose to the employer the employee's user name, password, or other information necessary to access employer-issued electronic devices, including but not limited to cell phones, computers, and tablet computers, or to access employer-provided software or e-mail accounts;

(b) prevents an employee from seeking injunctive relief in response to the provisions of subsection (2); or

(c) prevents the prosecution of a person for violating privacy in communications under 45-8-213.

(4) An employer may not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or job applicant for*:*

(a) not complying with a request or demand by the employer that violates this section*; or*

(b) legal expressions of free speech by the employee or job applicant, as protected in 39-2-904, made on personal social media.

(5) The provisions of subsection (4)(b) do not apply if the expression:

(a) by an employee or job applicant violates an employer's written policy; or

(b) violates the terms or conditions of the employee's employment contract.

~~(5)~~*(6)* (a) As used in this section, "personal social media" means a password-protected electronic service or account containing electronic content, including but not limited to e-mail, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, internet website profiles or locations, and online services or accounts, including password-protected services or accounts to which an employee may post information, data, or pictures.

(b) The term does not include a social media account that is:

(i) opened for or provided by an educational institution and intended solely for educational purposes; or

(ii) opened for or provided by an employer and intended solely for business-related purposes.

~~(6)~~*(7)* (a) An employee or an applicant for employment may bring an action against an employer for violating this section within 1 year in a small claims court. An employee or an applicant for employment may also have a cause of action under 45-8-213.

(b) Damages are limited to $500 or actual damages up to the limit provided in 3-10-1004. Legal costs may be awarded to the party that prevails in court.

~~(7)~~*(8)* If an employer gains information improperly under this section and subsequently is involved in a computer security breach as provided in 30-14-1704, the employer is subject to penalties under 30-14-142."

Section 2. Section 39-2-904, MCA, is amended to read:

"**39-2-904. Elements of wrongful discharge.** (1) A discharge is wrongful only if:

(a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(b) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; ~~or~~

(c) the employer materially violated an express provision of its own written personnel policy prior to the discharge, and the violation deprived the employee of a fair and reasonable opportunity to remain in a position of employment with the employer*; or*

(d) the employer terminated the employee solely based on the employee's legal expression of free speech, including but not limited to statements made on social media.

(2) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

(3) The employer has the broadest discretion when making a decision to discharge any managerial or supervisory employee."

Approved May 2, 2023

CHAPTER NO. 362

[SB 411]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; REVISING DEFINITIONS; REVISING LAWS RELATED TO DEALER DATA; REVISING LAWS RELATED TO PROHIBITED ACTIONS; REVISING LAWS RELATED TO RESPONSIBILITIES AND RESTRICTIONS; REVISING LAWS RELATED TO PROHIBITED ACTS RELATING TO A MOTOR VEHICLE FRANCHISEE; REVISING MOTOR VEHICLE LICENSING REQUIREMENTS; AMENDING SECTIONS 30-11-717, 30-11-718, 30-11-719, 61-4-201, 61-4-202, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY 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, 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 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. Section 30-11-717, MCA, is amended to read:

"**30-11-717. Definitions.** As used in 30-11-718, 30-11-719, *[section 4],* and this section, 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*, or both,* to carry out the specified function.

(2) "Cyber ransom" means to encrypt, restrict, or prohibit or threaten or attempt to encrypt, restrict, or prohibit a dealer's or a dealer's authorized integrator's access to protected dealer data for monetary gain.

~~(2)~~*(3)* "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)~~*(4)* "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 *or licensed by a dealer that includes a system of web-based applications, computer software, or computer hardware, whether located at the motor vehicle dealership or hosted remotely, and that stores or provides access*

to protected dealer data and includes dealership management systems and consumer relations management systems.

~~(4)~~*(5)* "Dealer data vendor" means any dealer management system provider, ~~or customer~~ *consumer* 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)~~*(6)* "Fees" means charges for *allowing* access to protected dealer data *in excess of any direct costs incurred by the dealer data vendor in providing protected dealer data access to an authorized integrator or allowing an authorized integrator to write data to a dealer data system.* ~~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.~~

(7) "Prior express written consent" means the dealer's express written consent that is contained in a document separate from any other consent, contract, franchise agreement, or other writing and that contains:

(a) the dealer's consent to the data sharing and identification of all parties with whom the data may be shared;

(b) all details that the dealer requires relating to the scope and nature of the data to be shared, including the data fields and the duration for which the sharing is authorized; and

(c) provisions and restrictions that are required under federal law to allow the sharing.

~~(6)~~*(8)* "Protected dealer data" means *any*:

~~(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~~

(a) personal, financial, or other data relating to a consumer that a consumer provides to a dealer or that a dealer otherwise obtains and that is stored in the dealer's data system;

(b) ~~any~~ other data regarding a dealer's business operations that is stored in the dealer's dealer data system*.; or*

(c) motor vehicle diagnostic data that is stored in a dealer data system. This subsection (8)(c) does not give a dealer any ownership rights to share or use the motor vehicle diagnostic data beyond what is necessary to fulfill a dealer's obligation to provide warranty, repair, or service work to a consumer.

(9) "Required manufacturer data" means:

(a) data required to be obtained by the manufacturer under federal or state law or to complete or verify a transaction between the dealer and the manufacturer; and

(b) information that is reasonably necessary for any of the following:

(i) a safety, recall, or other legal notice obligation;

(ii) the sale and delivery of a new motor vehicle or a certified used motor vehicle to a consumer;

(iii) the validation and payment of consumer or dealer incentives;

(iv) claims for dealer-supplied services relating to warranty parts or repairs;

(v) the evaluation of dealer performance, including but not limited to the evaluation of the dealer's monthly financial statements and sales or service, consumer satisfaction with the dealer through direct consumer contact, or consumer surveys;

(vi) dealer and market analytics;

(vii) the identification of the dealer that sold or leased a specific motor vehicle and the time of the transaction;

(viii) marketing purposes designed for the benefit of or to direct leads to dealers, not including a consumer's financial information on the consumer's credit application or a dealer's individualized notes about a consumer that are not related to a transaction;

(ix) motor diagnostic data; or

(x) the development, evaluation, or improvement of the manufacturer's products or services.

(10) "STAR standards" means the current, applicable security standards published by the standards for technology in automotive retail.

~~(7)~~*(11) (a)* "Third party" includes service providers, vendors, dealer data vendors, authorized integrators, and any other ~~individual or entity~~ *person* other than the dealer.

(b) The term does not include ~~any~~ *a* government entity acting pursuant to federal, state, or local law, ~~any entity~~ *a third party* acting pursuant to a valid court order*, or a manufacturer*~~, 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. Section 30-11-718, MCA, is amended to read:

"**30-11-718. Prohibited actions.** (1) A third party may not *do any of the following*:

(a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the *prior* express written consent of the dealer;

(b) take any action by contract, ~~by~~ technical means, or ~~by any other means that would~~ *otherwise to* 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~~*:, including all of the following:*

(i) imposing any ~~fees~~ *fee* or other ~~restrictions~~ *restriction* on the dealer or ~~any~~ *an* authorized integrator for ~~access to~~ *accessing* or sharing ~~of~~ protected dealer data or for writing data to a dealer data system*, including any fee on a dealer that chooses to submit or push data or information to the third party as prescribed in this section. A third party shall disclose a charge to the dealer and justify the charge by documentary evidence of the costs associated with access or the charge is a fee pursuant to this subsection (1)(b)(i).*~~;~~

(ii) prohibiting ~~any~~ *a* third party *that has satisfied or is compliant with the STAR standards or other generally accepted standards that are at least as comprehensive as the STAR standards and* that the dealer has identified as one of its authorized integrators from integrating into ~~that~~ *the* dealer's dealer data system or placing *an* unreasonable ~~restrictions~~ *restriction* on integration by ~~any such~~ *an* authorized integrator or other third party that the dealer wishes to be an authorized integrator. ~~Examples of restrictions include but are not limited to~~ *For the purposes of this subsection (1)(b)(ii), "unreasonable restriction" includes*:

(A) ~~restrictions~~ *an unreasonable limitation or condition* on the scope or nature of the data *that is* shared with an authorized integrator;

(B) ~~restrictions~~ *an unreasonable limitation* on the ability of the authorized integrator to write data to a dealer data system;

(C) ~~restrictions~~ *an unreasonable limitation* or ~~conditions~~ *condition* on a third party ~~accessing~~ *that accesses* or ~~sharing~~ *shares* protected dealer data or ~~writing~~ *that writes* data to a dealer data system; and

(D) requiring *unreasonable* access to *a third party's* sensitive, competitive, or other confidential business information ~~of a third party~~ as a condition for ~~access to~~ *accessing* protected dealer data or sharing protected dealer data with an authorized integrator.

(c) prohibit or limit a dealer's ability to store, copy, *or* securely share~~,~~ or use protected dealer data outside *of* the dealer data system in any manner ~~or~~ *and* for any reason; ~~or~~

(d) ~~permit~~ *allow* access to or access protected dealer data without ~~the~~ *prior* express written consent ~~of the dealer~~*; or*

(e) engage in any act of cyber ransom.

(2) Prior express written consent may:

(a) be unilaterally revoked or amended by the dealer with 30 days' notice without cause and immediately for cause;

(b) not be sought or required as a condition of or factor for consideration or eligibility for any manufacturer program, standard, or policy, including those that offer or relate to a bonus, incentive, rebate, or other payment or benefit to a dealer, except that if the bonus, incentive, rebate, or other payment program requires the delivery of the information that is protected dealer data to qualify for the program and receive the program benefits, a dealer shall supply the information to participate in the program.

~~(2)~~*(3)* ~~Nothing in this section prevents any dealer~~ *This section does not prevent a dealer, manufacturer,* or third party from discharging its obligations as a service provider *or otherwise* under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those responsibilities.

~~(3)~~*(4)* 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)~~*(5)* 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. Section 30-11-719, MCA, is amended to read:

"**30-11-719. Other responsibilities and restrictions.** *(1)* All dealer data vendors and authorized integrators:

~~(1)~~*(a)* may access, use, store, or share protected dealer data only to the extent permitted in the contract with the dealer;

~~(2)~~*(b)* shall make any agreement regarding access to, sharing or selling of, copying, using, or transmitting protected dealer data terminable upon no more than 90 days' notice from the dealer;

~~(3)~~*(c)* 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)~~*(i)* 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)~~*(ii)* 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)~~*(d)* shall 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)~~*(e)* shall allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of any protected dealer data.

(2) Unless a dealer gives prior express written consent, a manufacturer may not access, share, sell, copy, use, or transmit or require a dealer to share or provide access to protected dealer data beyond the required manufacturer data and may use any required manufacturer data obtained from a dealer data system for the purposes described in subsection (5).

(3) A manufacturer may not engage in an act of cyber ransom or take an action by contract, technical means, or otherwise to prohibit or limit a dealer's ability to protect, store, copy, share, or use protected dealer data, including actions described in subsection (3)(b)(ii). A manufacturer or a manufacturer's selected third party may not require a dealer to pay a fee for the sharing of required manufacturer data if the manufacturer both:

(a) requires a dealer to provide required manufacturer data through a specific third party that the manufacturer selects; and

(b) does not allow the dealer to submit the data using the dealer's choice of a third-party vendor and both of the following apply:

(i) the data is in a format that is compatible with the file format required by the manufacturer; and

(ii) the third-party vendor satisfies or is in compliance with the STAR standards or other generally accepted standards that are at least as comprehensive as the STAR standards.

(4) A manufacturer shall indemnify a dealer for any third-party claims asserted against or damages incurred by the dealer to the extent caused by access to, use of, or disclosure of protected dealer data in violation of this section by the manufacturer or a third party acting on behalf of a manufacturer to whom the manufacturer has provided the protected dealer data. A dealer bringing a cause of action against a manufacturer for a violation of this section has the burden of proof.

(5) Except as provided in subsection (2), this section does not restrict or limit a manufacturer's right to obtain required manufacturer data, use required manufacturer data for the purposes prescribed by 30-11-717(9), or use or control data that is proprietary to the manufacturer, or created by the manufacturer, obtained from a source other than the dealer or that is public information.

(6) A manufacturer or a third party may not require a dealer to grant the manufacturer, the third party, or any person acting on behalf of the manufacturer or third party direct or indirect access to the dealer's dealer data system. Instead of providing a manufacturer or third party with access to the dealer's data system, a dealer may submit or push data or information to a manufacturer or third party through any widely acceptable electronic file format or protocol that complies with the STAR standards or other generally accepted standards that are at least as comprehensive as the STAR standards."

Section 4. Dealer data vendors -- authorized integrators -- requirements. (1) A dealer data vendor shall:

(a) adopt and make available a standardized framework for the exchange, integration, and sharing of data from dealer data systems with authorized integrators and the retrieval of data by authorized integrators using the STAR standards or a standard that is compatible with the STAR standards; and

(b) provide access to open application programming interfaces to authorized integrators. If the application programming interfaces are not the reasonable commercial or technical standard for secure data integration, the dealer data vendor may provide a similar open access integration method if that method provides the same or better access to authorized integrators as an application programming interface and uses the required standardized framework.

(2) A dealer data vendor and authorized integrator:

(a) may access, use, store, or share protected dealer data or any other data from a dealer data system only to the extent allowed in the written agreement with the dealer;

(b) shall make any agreement relating to access to, sharing or selling of, copying, using, or transmitting protected dealer data terminable on 90-day notice from the dealer;

(c) on notice of the dealer's intent to terminate the agreement, in order to prevent any risk of consumer harm or inconvenience, shall work to ensure a secure transition of all protected dealer data to a successor dealer data vendor or authorized integrator, including:

(i) providing access to or an electronic copy of all protected dealer data and all other data stored in the dealer data system in a commercially reasonable time and format that a successor dealer data vendor or authorized integrator can access and use; and

(ii) deleting or returning to the dealer all protected dealer data before the contract terminates pursuant to the dealer's written directions;

(d) on a dealer's request, shall provide the dealer with a listing of all entities with whom it is sharing protected dealer data or whom it has allowed access to protected dealer data; and

(e) shall allow a dealer to audit the dealer data vendor or authorized integrator's access to and use of any protected dealer data.

Section 5. Section 61-4-201, MCA, is amended to read:

"**61-4-201. Definitions.** As used in this part, the following definitions apply unless the context clearly indicates otherwise:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distribute" means to sell new motor vehicles other than at retail or to enter into a franchise agreement authorizing a dealer to buy new motor vehicles for resale or to service motor vehicles under a manufacturer's or distributor's warranty.

(3) "Distributor" or "wholesaler" means a person who sells or distributes a line-make of new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(4) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of a line-make of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(5) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of a line-make of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(6) "Franchise" means a contract and any agreed-to amendments between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to:

(i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor; or

(ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;

(c) the franchisee, as an independent and separate business, constitutes a component of the franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(7) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services the new motor vehicles to and for the general public.

(8) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(9) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(10) "Line-make" means vehicles that are offered for sale, lease, or distribution under a common name, trademark, or service mark.

(11) "Manufacturer" means a person who manufactures or assembles a line-make of new motor vehicles and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle dealers in this state or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck. The term includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, a manufacturer distributes its products.

(12) "Motor vehicle" includes *a motorboat and* a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

(13) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(14) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(15) (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers.

(16) "Transferee" means a person or entity that:

(a) is in possession or control of a new motor vehicle dealer;

(b) holds an ownership or signed contract interest in a new motor vehicle dealer;

(c) is acting in a fiduciary capacity for a new motor vehicle dealer; or

(d) is an heir, devisee, personal representative, beneficiary, successor, or assign of a new motor vehicle dealer."

Section 6. Section 61-4-202, MCA, is amended to read:

"**61-4-202. License requirements.** (1) A new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, importer, or franchisor may not engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to financial institutions disposing of repossessed vehicles, or to a person disposing of a personal motor

vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor vehicles as defined by this part.

(2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

(3) The following information, if applicable, must be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; ~~and~~

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state*; and*

(e) a statement affirming that the relationship between the applicant and the new motor vehicle dealer is subject to the terms and conditions of a standard written franchise agreement applicable to all its new motor vehicle dealers in this state. A copy of the standard written franchise agreement, including all standard terms and conditions applicable to all franchised dealers or distributors in this state must be filed with the application unless the standard written franchise agreement is already on file with the department. Any revision of or additions to the standard basic franchise agreement must be filed with the department within 30 days of dissemination to the new motor vehicle dealers in this state.

(4) A license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of $15, and notifies the department of any changes in the information previously supplied.

(5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct dealership of domestic motor vehicles, the importer of foreign manufactured motor vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign motor vehicles is licensed as provided in this part.

(b) Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer shall obtain a license under part 1 of this chapter.

(c) The obtaining of a license under Title 61, chapter 4, part 1, or this part conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

(6) When an objection to a proposal to terminate or not continue a franchise or a proposal to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make is made pursuant to 61-4-206, a replacement license or new license may not be issued under this section to any replacement dealer or new dealer until adjudication by the department of the written objection filed pursuant to 61-4-206 and the exhaustion of all appellate remedies available to the objector."

Section 7. Section 61-4-208, MCA, is amended to read:

"**61-4-208. Prohibited acts -- rights of franchisees.** (1) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer or transferee of a new motor vehicle dealer to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive;

(v) subject to subsection (2)(b) and notwithstanding the terms of a franchise agreement or other agreement providing otherwise, purchase *or utilize* goods or services*, including electronic services such as websites, data management or storage systems, digital retail platforms, software, or other digital services or platforms, from a vendor, or contract with or engage any* ~~from a~~ vendor identified, selected, or designated by a manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or entities listed without allowing the franchisee, after consultation with the franchisor, to obtain goods or services of like kind, quality, and design from a vendor that the franchisee chooses*, so long as the goods or services comply with the franchisor's reasonable standards or requirements. It is a violation of this section for a manufacturer, a factory branch, a distributor, a distributor branch, an importer, or an affiliate of the persons or entities listed to coerce a franchisee to purchase or utilize certain goods or services by the withholding of any benefit, including monetary incentives and vehicle allocation; the dealer is otherwise eligible to receive. Nothing in this provision prohibits a manufacturer, factory branch, distributor, distributor branch, or affiliate of the persons or entities listed from establishing any program discount, credit, rebate, or incentive that is conditioned on a new motor vehicle dealer's purchase or use of such goods or services.*

(vi) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities requirements. The reasonable facilities requirements may not include any requirement that a new motor vehicle dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

(vii) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and

remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

(viii) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, importer, or any representative of any of these persons or entities or do any other act unfair to the new motor vehicle dealer or transferee of a new motor vehicle dealer by:

(A) *withholding or threatening to withhold any incentive payments in whole or in part or denying or threatening to deny the dealer the right to participate in an incentive program in which more than one dealer of the line-make in this state is eligible to participate and on the same terms. Nothing contained in this subsection (1)(a)(viii)(A) requires that a dealer be qualified by a manufacturer or distributor for incentive payments or the right to payments or benefits from an incentive program and a manufacturer, factory branch, distributor, distributor branch, or importer may not be prohibited from informing a dealer of this, unless the dealer meets the qualifications, requirements, and standards for payment or benefits reasonably established by the manufacturer, factory branch, distributor, distributor branch, or importer. If the new motor vehicle dealer has otherwise submitted a claim substantially complying with the qualifications, requirements, and standards of the manufacturer, factory brand, distributor, distributor branch, or importer, a manufacturer, factory branch, distributor, distributor branch, or importer may not deny an incentive payment or benefit claim based solely on a dealer's incidental failure to comply with a specific processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim. If a claim is rejected for such an incidental requirement, the new motor vehicle dealer may correct or complete and resubmit a previously submitted incentive claim for a period of up to 60 days following the new motor vehicle dealer's receipt of first notice of the failure. A manufacturer, factory branch, distributor, distributor branch, or importer is not required to approve any such incentive claim if all material claim processing requirements are not substantially complied with by the new motor vehicle dealer within the time periods prescribed by this section.*

(B) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, importer, or any representative of any of these persons or entities and the new motor vehicle dealer or transferee of a new motor vehicle dealer; or

~~(B)~~*(C)* threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the new motor vehicle dealer or transferee of a new motor vehicle dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or any representative or agent of any of these persons or entities;

(b) delay, refuse, or fail to deliver *or offer to deliver* new motor vehicles *or new vehicle parts* in a reasonable time *and* in a ~~reasonable quantity relative to~~ *reasonable quantity taking into consideration the number of new motor vehicles or parts reasonably available for allocation and considering* the new motor vehicle dealer's or transferee of a new motor vehicle dealer's facilities, ~~and~~ *the dealer's historical selling pattern, and the dealer's* sales potential *in the dealer's relevant market area* after accepting an order *for any new vehicles or parts as are covered by the franchise* from a new motor vehicle dealer *having a franchise for the retail sale of any new vehicle or parts covered by the franchise* ~~or transferee of a new motor vehicle dealer~~ if the new motor ~~vehicles are~~ *vehicle or part is* publicly advertised as being available for immediate delivery *or actually being delivered by the manufacturer, factory branch, distributor, distributor branch, or importer provided the new motor vehicle dealer meets any reasonable standards or requirements established by the manufacturer, factory*

branch, distributor, distributor branch, or importer related to the new motor vehicle or part. This subsection (1)(b) is not violated if the failure is caused by a force majeure beyond the control of the manufacturer, factory branch, distributor, distributor branch, or importer, provided that a manufacturer, factory branch, distributor, distributor branch, or importer may not establish a minimum sales; *requirement for determining a new motor vehicle dealer's compliance with the franchise that fails to take into consideration the number of new motor vehicles or parts delivered or offered to be delivered to the dealer in the applicable time period.*

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or transferee of a new motor vehicle dealer or franchise of a new motor vehicle dealer or transferee of a new motor vehicle dealer regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards;

(d) *whether by agreement or otherwise amend or attempt to amend its franchise agreement or similar agreement governing the sales and leasing of new motor vehicles or establish or implement a franchise agreement for the sales and leasing of new motor vehicles, under which the manufacturer, factory branch, distributor, distributor branch, or importer:*

(i) maintains a website or other electronic or digital means of communication for negotiating binding terms of sale or leasing of new motor vehicles directly with the retail buyer or lessee on prices or other substantive terms of sale or leasing of new vehicles, provided that a manufacturer or distributor may maintain a website or other electronic or digital means of communication that does not involve negotiating binding terms of sale or leasing of new motor vehicles directly with the retail buyer or lessee on prices or other substantive terms of sale or leasing of new vehicles;

(ii) retains ownership of new motor vehicles until they are sold or leased to the retail buyer or lessee. However, a manufacturer, factory branch, distributor, distributor branch, or importer may maintain a common supply of new vehicles of which it maintains ownership until vehicles are sold to dealers from which more than one dealer may buy vehicles provided that the manufacturer, factory branch, distributor, distributor branch, or importer may not use the common supply of new vehicles to engage in the negotiation of binding terms of sales or leases directly with a retail buyer or lessee.

(iii) except for the sale or lease of a vehicle to a bona fide employee of a manufacturer, factory branch, distributor, distributor branch, or importer or in connection with a replacement or buyback, consigns new motor vehicles to dealers for dealer inventory or for sale or lease to a retail buyer or lessee;

(iv) reserves the right to negotiate binding terms of sale directly with retail buyers or lessees of new motor vehicles. Displaying on a website or other electronic or digital means of communication aggregate or average prices or other costs, available financing sources, or a conditional aggregate or average trade-in value are not considered negotiating.

(v) reserves the right to offer or negotiate directly with the retail buyer or lessee at the time of sale in connection with the sale of a new motor vehicle sale of a service contract, vehicle maintenance agreement, guaranteed asset protection agreement or waiver, or any other vehicle-related products and services.

(e) amend or modify or attempt to amend or modify any franchise agreement including but not limited to the dealer's relevant market area if the amendment or modification substantially and adversely affects the dealer's rights, obligations, investment, or return on investment, without giving a 60-day advance written notice of the proposed amendment or modification to the

dealer. Any term or provision in the franchise agreement that purports to give the manufacturer, factory branch, distributor, distributor branch, or importer the right to unilaterally amend or modify the agreement is void.

(f) notwithstanding the terms, provisions, or conditions of any agreement or franchise, use or consider the new motor vehicle dealer's or transferee of a new motor vehicle dealer's performance relating to the sale of new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of new motor vehicles, parts, or service contracts in determining:

(i) eligibility to purchase program, certified, or other used motor vehicles;

(ii) the volume, type, or model of program, certified, or other used motor vehicles that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase;

(iii) the price or prices of any program, certified, or other used motor vehicles that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase; or

(iv) the availability or amount of any discount, credit, rebate, or sales incentive that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to receive for the purchase of any program, certified, or other used motor vehicles; or

~~(e)~~*(g)* enforce a right of first refusal to acquire the new motor vehicle dealer's assets or ownership by a manufacturer, distributor, or manufacturer's assignee or manufacturer's representative or to require a dealer to grant a right of option to a manufacturer, distributor, or manufacturer's representative.

(2) (a) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, distributor branch, or importer is beyond the control of the listed persons or entities.

(b) (i) Subsection (1)(a)(v) does not apply to goods or services specifically eligible for reimbursement of over one-half the cost of the goods or services pursuant to a franchisor or distributor program or incentive granted to the franchisee on reasonable, written terms.

(ii) For the purposes of subsection (1)(a)*(v)* and this subsection (2)(b), "goods" do not include:

(A) moveable displays, brochures, or promotional materials containing material subject to the intellectual property rights of a franchisor or parts to be used in repairs under warranty obligations of a franchisor; or

~~(B) special tools or training required by the franchisor.~~

(B) special tools or training required by the franchisor, provided however, subsections (1)(a)(v) and (2)(b) do not apply to any special tool acquired by a new motor vehicle dealer from an alternate source that is of the same kind, quality, design, and function as required by the franchisor and complies with the franchisor's reasonable standards.

(c) Within the 60-day notice period provided for in subsection (1)(f) the dealer may pursue remedies under 61-4-215 and 61-4-216 and file with the department and serve upon the respondent a petition to determine whether good cause exists for permitting the proposed modification. Multiple complaints pertaining to the same proposed modification may be consolidated for hearing. The proposed modification may not take effect pending the determination of any protest filed by a dealer.

(d) (i) In making a determination of whether there is good cause for permitting a proposed modification of a dealer franchise agreement, including but not limited to a dealer's relevant market area, the burden of proof is on the manufacturer, factory branch, distributor, distributor branch or importer, except that the burden of proof with regard to the factor set forth in subsection

(2)(d)(i)(C) is on the dealer. The department shall consider any relevant factor including:

(A) the reasons for the proposed modification;

(B) whether the proposed modification is applied to or affects all motor vehicle dealers in a nondiscriminatory manner;

(C) the degree to which the proposed modification will have substantial and adverse effects on the dealer's rights, obligations, investment, or return on investment; and

(D) whether the proposed modification is in the public interest.

(ii) With respect to a proposed modification of a dealer's relevant market area, the department shall also consider:

(A) the traffic patterns between consumers and the same line-make franchised dealers of the affected manufacturer, factory branch, distributor, distributor branch, or importer who are located within the market as a whole;

(B) the pattern of new vehicle sales and registrations of the affected manufacturer, factory branch, distributor, distributor branch, or importer within various portions of the relevant market area and within the market as a whole;

(C) the growth or decline in population, density of population, and new car registrations in the relevant market area and the market as a whole;

(D) the presence or absence of natural geographical obstacles or boundaries;

(E) the proximity of census tracts or other geographic units used by the affected manufacturer, factory branch, distributor, distributor branch, or importer in determining the same line-make dealers' respective relevant market area; and

(F) the reasonableness of the change or proposed change to the dealer's relevant market area, considering the benefits and harm to the petitioning dealer, other same line-make dealers, and the manufacturer, factory branch, distributor, distributor branch, or importer.

(e) Notwithstanding the provisions of subsection (1)(d), a manufacturer, factory branch, distributor, distributor branch, or importer may engage in fleet sales with a fleet customer that has a designation as such by the manufacturer, factory branch, distributor, distributor branch, or importer because it has purchased or has committed to purchase five or more vehicles under the fleet program.

(f) Nothing in subsection (1)(d) limits a manufacturer, factory branch, distributor, distributor branch, or importer from setting or advertising a manufacturer's suggested retail price.

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana ~~that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana~~. *This prohibition includes any dealership of a new line-make established by a manufacturer, factory branch, distributor, distributor branch, or importer or a subsidiary or a company affiliated through ownership of the manufacturer, factory branch, distributor, distributor branch, or importer of at least 25% of the equity of the company.*

(b) This subsection (3) does not prohibit the operation by a manufacturer, factory branch, distributor, distributor branch, importer, or a field representative, an officer, an agent, or any representative of any of these persons or entities of a dealership for a temporary period, not to exceed 1 year, during the transition from one owner or operator to another or the ownership or control of a dealership

by a manufacturer, factory branch, distributor, distributor branch, or importer while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership. Approval of the sale may not be unreasonably withheld by the manufacturer.

~~(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.~~

(c) A manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

Section 8. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 30, chapter 11, and the provisions of Title 30, chapter 11, apply to [section 4].

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

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. Applicability. (1) [This act] applies to all presently existing or hereafter established systems of distribution of motor vehicles in this state, including all existing agreements between a manufacturer, a factory branch, a distributor or a distributor branch, and a motor vehicle dealer, except to the extent that such application would impair valid contractual agreements in violation of the state or federal constitution.

(2) [This act] does not:

(a) govern, restrict, or apply to data that exists outside of a dealer data system, including data that is generated by a motor vehicle or devices that a consumer connects to a motor vehicle; or

(b) authorize a dealer or third party to use data that is obtained from a person in a manner that is inconsistent with either:

(i) an agreement with the person; or

(ii) the purposes for which the person provided the data to the dealer or third party.

Approved May 2, 2023

CHAPTER NO. 363

[HB 32]

AN ACT PROVIDING FOR PETITIONS TO BE FILED AGAINST THE BOARD OF A LOCAL SPECIAL DISTRICT IF THE BOARD HAS BEEN FOUND IN NONCOMPLIANCE WITH STATUTORY REQUIREMENTS; REQUIRING

CLAIMS BE REPORTED TO THE COUNTY ATTORNEY AND TRAINING DEVELOPED BY THE LOCAL GOVERNMENT CENTER; REQUIRING THE LOCAL GOVERNMENT ENTITY TO PAY TRAINING FEES; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING DEFINITIONS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Local district board oversight -- methods for redress. (1) (a) If at least 5% of the qualified electors that are served by a local government entity file a petition against the board of the local government entity for allegations that the board has not complied with statutes applicable to the governance, operation, and function of the board, including but not limited to a violation of public meeting law, the board member appointment or election process, or the actions and duties required of a board member, the petition must be filed with the governing body under whose authority the local government entity was created.

(b) The governing body under whose authority the local government entity was created shall remit petitions received under subsection (1)(a) to the county attorney. The county attorney shall evaluate the petition and shall provide a written notice of determination to the governing body, the board of the local government entity that is subject to the petition, and any petitioner who requests a copy. If the county attorney has a conflict of interest, the county attorney shall seek review by a prosecutor in another jurisdiction. If the county attorney or prosecutor who conducts a review as required in this subsection (1) determines the petition has merit, the local government entity shall participate in training provided by the local government center as provided in subsection (2).

(2) (a) The local government center shall develop a training curriculum appropriate to address the issues detailed in a petition referred by the county attorney to the local government center as provided in subsection (1)(b).

(b) The board of the local government entity shall participate in all relevant training provided by the local government center.

(3) The board of the local government entity shall remit all fees necessary for the training required in subsection (2) to the local government center.

(4) The local government center shall report to the local government interim committee, in accordance with 5-11-210, all petitions received that resulted in the development and delivery of training required under subsection (2).

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

(a) "Local government center" means the local government center provided for in 20-25-237.

(b) (i) "Local government entity" has the meaning provided in 2-7-501, except as provided in subsection (5)(b)(ii) of this section.

(ii) Local government entity does not include a county, consolidated city-county, incorporated city or town, or school district.

Section 2. 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 3. Effective date. [This act] is effective July 1, 2023.

Section 4. Applicability. [This act] applies to actions taken on or after [the effective date of this act].

Approved May 3, 2023

CHAPTER NO. 364

[HB 45]

AN ACT REVISING LAWS RELATING TO HOSPITAL FINANCIAL ASSISTANCE AND COMMUNITY BENEFIT REQUIREMENTS; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH FINANCIAL ASSISTANCE AND COMMUNITY BENEFIT STANDARDS FOR NONPROFIT HOSPITALS; ESTABLISHING FINANCIAL ASSISTANCE AND COMMUNITY BENEFIT REPORTING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 50-5-106, 50-5-112, 50-5-121, AND 50-5-245, MCA.

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

Section 1. Section 50-5-106, MCA, is amended to read:

"**50-5-106. Records and reports required of health care facilities -- confidentiality.** *(1)* Health care facilities shall keep records and ~~make reports as required by~~ *provide the records at the request of* the department.

(2) ~~Before February 1 of each year, every~~ *Every* licensed health care facility shall submit an annual report for the preceding calendar year to the department.

(3) Every hospital, critical access hospital, or rural emergency hospital that is operating as a nonprofit health care facility under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), shall submit to the department:

(a) a copy of internal revenue service form 990 schedule H and associated worksheets; and

(b) both a financial assistance policy and a community benefit plan for the current calendar year.

(4) ~~The report~~ *Reports required under this section* must be ~~on forms and contain information specified by the department~~ *provided to the department within 30 days of filing the required forms with the internal revenue service annually*.

(5) Information received by the department through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way ~~which~~ *that* would identify patients. A department employee who discloses information that would identify a patient must be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, if applicable, unless the disclosure was authorized as permitted by law.

(6) Information and statistical reports from health care facilities ~~which~~ *that* are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, must be accessible to the public."

Section 2. Section 50-5-112, MCA, is amended to read:

"**50-5-112. Civil penalties.** (1) ~~A~~ *Except as provided in 50-5-121, a* person who commits an act prohibited by 50-5-111 is subject to a civil penalty not to exceed $1,000 for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2. The department or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located.

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

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

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

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

(d) other matters as justice may require.

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

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

Section 3. Section 50-5-121, MCA, is amended to read:

"**50-5-121. Hospital discrimination based on ability to pay prohibited -- *community benefit and* ~~charity care~~ *financial assistance* requirements -- *rulemaking authority.*** (1) ~~Except as provided in subsection (3), a~~ *A* hospital*, critical access hospital, or rural emergency hospital* must have in writing~~:~~

~~(a)~~ a policy applying to all patients, including medicaid and medicare patients, that prohibits discrimination based on a patient's ability to pay~~; and~~.

~~(b) a charity care policy consistent with industry standards applicable to the area the facility serves and the tax status of the hospital.~~

~~(2)~~*(2)* A hospital*, critical access hospital, or rural emergency hospital* may not transfer a patient to another hospital or health care facility based on the patient's ability to pay for health care services.

(3) (a) A hospital operating as a nonprofit health care facility must have in writing:

(i) a financial assistance policy consistent with federal standards and standards established by the department, applicable to the area the hospital serves; and

(ii) a community benefit policy consistent with federal standards and standards established by the department.

(b) A hospital, critical access hospital, or rural emergency hospital operating as a nonprofit health care facility shall:

(i) adhere to the written financial assistance and community benefit policies; and

(ii) make the policies available to the public.

~~(3) A specialty hospital must have in writing a charity care policy consistent with industry standards for nonprofit hospitals irrespective of the tax status of the specialty hospital.~~

(4) No later than July 1, 2024, the department shall adopt rules to implement the financial assistance and community benefit requirements of this part, which must be specific to the hospital and the area or areas it serves. Rules must include but are not limited to rules that:

(a) define financial assistance and community benefit consistent with federal standards, wherever possible;

(b) establish the standards for community benefit and financial assistance applicable to hospitals operating as nonprofit health care facilities consistent with federal standards, wherever possible; and

(c) establish penalties for failing to comply with 50-5-106 and this section. "

Section 4. Section 50-5-245, MCA, is amended to read:

"**50-5-245. Department to license specialty hospitals -- standards -- rulemaking -- moratorium.** (1) Subject to subsection (4), the department shall license specialty hospitals using the requirements for licensure of hospitals and the procedure provided for in parts 1 and 2 of this chapter.

(2) Prior to approving an application under this section, the department shall adopt rules that are necessary to implement and administer this section.

(3) Notwithstanding the requirements of subsection (1), the department may not accept an application or issue a license for a specialty hospital before July 1, 2009.

(4) A health care facility licensed by the department and in existence on May 8, 2007, may not change its licensure status in order to qualify for licensure as a specialty hospital unless the health care facility is licensed as a hospital and the hospital is not subject to the provisions of 50-5-246 and subsections (5) through (9) of this section.

(5) A specialty hospital meets the 24-hour emergency care requirements for a hospital, as defined in 50-5-101, if it has an agreement with a hospital in the area served by the specialty hospital stating that the hospital will provide 24-hour emergency care to patients of the specialty hospital.

(6) A specialty hospital applying for a license must have:

(a) a ~~charity care~~ *financial assistance* policy meeting the provisions of 50-5-121 ~~and, if applicable, subsection (9) of this section~~ *if the hospital will be operating as a nonprofit health care facility or meeting the provisions of subsection (9) of this section, if applicable*; and

(b) a joint venture relationship with a hospital; or

(c) a signed statement from a ~~nonprofit~~ hospital *operating as a nonprofit health care facility* in the community acknowledging that the hospital declined a bona fide, good faith opportunity to participate in a joint venture with the applicant.

(7) A specialty hospital owned by physicians and proposed as a joint venture with a ~~nonprofit~~ hospital *operating as a nonprofit health care facility* in the community may be licensed if:

(a) the majority of partnering physicians hold active privileges with the joint venture hospital; and

(b) the partnering hospital holds an ownership interest of at least 50%.

(8) This section does not prohibit physicians who are partners in a specialty hospital that is proposed as a joint venture from managing the specialty hospital.

(9) The ~~charity care~~ *financial assistance* policy for a specialty hospital applying as a joint venture with a ~~nonprofit~~ hospital *operating as a nonprofit health care facility* in the community must be the same as the policy used by the ~~nonprofit~~ hospital."

Section 5. Transition. (1) The department of public health and human services may not require the submission of the financial assistance policy and community benefit report required under [this act] until the department has adopted rules specifying the information to be reported.

(2) A hospital financial assistance policy required under [this act] may comply with only federal financial assistance standards until the department of public health and human services has adopted rules specifying state standards for the policy.

Approved May 3, 2023

CHAPTER NO. 365

[HB 47]

AN ACT GENERALLY REVISING THE MONTANA INFORMATION TECHNOLOGY ACT; REVISING TERMINOLOGY; PROVIDING THE DEPARTMENT OF ADMINISTRATION SOLE AUTHORITY TO TERMINATE AN AGENCY'S INFORMATION TECHNOLOGY RESOURCE AND REQUIRING THE USE OF AN ALTERNATIVE INFORMATION TECHNOLOGY RESOURCE; AND AMENDING SECTIONS 2-4-302, 2-6-1102, 2-17-505, 2-17-506, 2-17-512, 2-17-513, 2-17-514, 2-17-515, 2-17-516, 2-17-521, 2-17-523, 2-17-524, 2-17-526, 2-17-532, 2-17-533, 2-17-534, 2-17-546, 2-17-551, 2-17-552, 2-17-1101, 2-17-1102, 2-17-1103, 2-18-101, 7-22-2151, 10-3-106, 61-3-346, 61-3-347, 61-11-105, 75-10-805, AND 87-1-272, MCA.

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

Section 1. Section 2-4-302, MCA, is amended to read:

"**2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which contact was made with the primary sponsor as required in subsection (2)(e). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(ii) the number of persons affected.

(2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. When the agency files the proposal notice with the secretary of state to prepare it for publication in the register, the agency shall concurrently send an electronic copy of the proposal notice to the appropriate administrative rule review committee. If the secretary of state requires formatting changes to the proposal notice before it may be published, the agency is not required to send another copy of the proposal notice to the committee. The requirement to concurrently send a copy of the proposal notice to the committee is fulfilled if the agency sends an electronic copy to each member of the staff of the appropriate rule review committee on the same day that the notice is filed with the secretary of state.

(b) (i) Except as provided in subsection (2)(b)(ii), within 3 days of publication, a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking

proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(c).

(ii) In lieu of sending a copy of the published proposal notice to an interested person who has requested the notice, the agency may, with the consent of that person, send that person an electronic notification that the proposal notice is available on the agency's website and an electronic link to the part of the agency's website or a description of the means of locating that part of the agency's website where the notice is available.

(iii) Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection (2)(b)(iii) if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(c) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(d) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state ~~electronic~~ *digital* access system or other electronic communications system available to the public.

(e) (i) When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall contact, as provided in subsection (8), the legislator who was the primary sponsor of the legislation to:

(A) obtain the legislator's comments;

(B) inform the legislator of the known dates by which each step of the rulemaking process must be completed; and

(C) provide the legislator with information about the time periods during which the legislator may comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative rule review committee.

(ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant to this subsection (2)(e) each time that a rule is being proposed to initially implement the legislation for a program.

(iii) Within 3 days after a proposal notice covered under subsection (2)(e)(i) has been published as required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor contacted under this subsection (2)(e).

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for

oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(b) and provide them an opportunity to place their names on the list.

(8) (a) For purposes of contacting primary sponsors under subsection (2)(e), a current or former legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. The secretary of state may also use legislator contact information provided by the legislative services division for the purposes of the register. The secretary of state shall update the contact information whenever the secretary of state receives corrected information from the legislator or the legislative services division. An agency proposing rules shall consult the register when providing sponsor contact.

(b) An agency has complied with the primary bill sponsor contact requirements of this section when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone number on file with the secretary of state pursuant to subsection (8)(a). If the agency is able to contact the primary sponsor by using less than all of these three methods of contact, the other methods need not be used.

(9) 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 2. Section 2-6-1102, MCA, is amended to read:

"**2-6-1102. Department of administration -- powers and duties.** (1) To ensure compatibility with the information technology systems of state government and to promote adherence to records management principles and best practices, the department of administration, in consultation with the secretary of state, shall establish standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration, in consultation with the secretary of state, shall approve all acquisitions of executive branch agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic

methods to ensure compatibility with the standards developed under subsection (1).

(3) The department of administration is responsible for the management and operation of equipment, systems, facilities, and processes integral to ~~the department's central computer center and statewide telecommunications system~~ *information technology resources and the state telecommunications network*."

Section 3. Section 2-17-505, MCA, is amended to read:

"**2-17-505. Policy.** (1) It is the policy of the state that information technology be used to improve the quality of life of Montana citizens by providing educational opportunities, creating quality jobs and a favorable business climate, improving government, and protecting individual privacy and the privacy of the information contained within information technology ~~systems~~ *resources*.

(2) It is the policy of the state that the development of information technology resources in the state must be conducted in an organized, deliberative, and cost-effective manner.

(3) It is the policy of the state that information technology is essential and vital to the people of the state of Montana, and the services, systems, and infrastructure are therefore considered to be an asset of the state.

(4) It is the policy of the state that commercial off-the-shelf information technology resources be used whenever feasible, rather than the commissioning of custom solutions.

~~(4)~~*(5)* The following principles must guide the development of ~~state~~ information technology resources:

(a) There are statewide information technology ~~policies, standards, procedures, and guidelines~~ *policies, framework, controls, standards, procedures, and guidelines* applicable to all state agencies and other entities using ~~the state network~~ *an information technology resource*.

(b) Mitigation of risks is a priority in order to protect individual privacy and the privacy of information contained within information technology ~~systems~~ *resources* as they become more interconnected and as the liabilities stemming from the risk to information technology~~, also known as cyber risk,~~ have increased.

(c) Whenever feasible and not an undue ~~cyber~~risk, common data is entered once and shared among government entities at any level or political subdivision.

(d) Third-party providers of data, such as citizens, businesses, and other government entities, are responsible for the accuracy and integrity of the data provided to government entities.

(e) Third-party providers of information technology resources, such as infrastructure as a service, platform as a service, and software as a service, shall comply with state security and information technology policies, risk management framework, controls, standards, procedures, and guidelines when providing information technology resources to government entities.

~~(e)~~*(f)* Government entities are required to conduct business through open, transparent processes to ensure accountability to the citizenry, and information technology provides access to information through simple and expeditious procedures.

~~(f)~~*(g)* In order to minimize ~~unwarranted~~ duplication, *shared or* similar information technology ~~systems~~ *resources* and data management applications ~~are~~ *must be* implemented and managed in a coordinated manner.

~~(g)~~*(h)* Planning and development of information technology resources are conducted in conjunction with budget development and approval.

~~(h)~~*(i)* Information technology ~~systems~~ *resources* are deployed aggressively whenever it can be shown that it will provide improved services to Montana citizens.

~~(i)~~*(j)* Public-private partnerships are used to deploy information technology ~~systems~~ *resources* when practical and cost-effective.

~~(j)~~*(k)* ~~State information technology systems~~ *Information technology resources* are developed in cooperation with the federal government and local governments with the objective of providing seamless access to information and services to the greatest degree possible.

~~(k)~~*(l)* ~~State information technology systems~~ *Information technology resources* are able to accommodate ~~electronic~~ *digital* transmissions between the state and its citizens, businesses, and other government entities, including providing ~~financial~~ incentives for citizens and businesses to use ~~electronic~~ *digital* government services.

~~(l)~~*(m)* ~~State information technology systems~~ *Information technology resources* are able to embrace the economics of digitized records to avoid duplication and transport costs.

~~(m)~~*(n)* ~~Electronic~~ *Digital* record creation, management, storage, and retrieval processes and procedures are used to create and deliver professional records management experiences for the citizens of Montana.

~~(n)~~*(o)* ~~State information technology systems~~ *Information technology resources* are able to embrace continuous process improvement initiatives in order to keep pace with new and emerging technologies and delivery channels in order to allow citizens to determine when, where, and how they interact with government agencies.

~~(5)~~*(6)* It is the policy of the state that the department must be accountable to the governor, the legislature, and the citizens of Montana."

Section 4. Section 2-17-506, MCA, is amended to read:

"**2-17-506. Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the information technology board established in 2-15-1021.

~~(2) "Central computer center" means any stand-alone or shared computer and associated equipment, software, facilities, and services administered by the department for use by state agencies.~~

(2) "Chief data privacy officer" means a person appointed by the department to serve as chief data policy advisor to the director of the department on privacy protection issues, including the implementation of data privacy protections, compliance with federal laws, regulations, and policies relating to data privacy, management of data privacy risks at the department, and development and evaluation of legislative, regulatory, and other policy proposals.

~~(3)~~*(3)* "Chief information officer" means a person appointed by the director of the department to carry out the duties and responsibilities of the department relating to information technology.

(4) "Commercial off-the-shelf information technology resources" means commercially available information technology resources that are ready-made, are primarily configurable, and can be adapted after purchase to meet the needs of the state.

~~(4)~~*(5)* "Data" means any information stored on information technology resources.

~~(5)~~*(6)* "Department" means the department of administration established in 2-15-1001.

(7) "Digital" means electronic data and the information technology resources used to store, retrieve, and send data.

~~(6)~~*(8)* "~~Electronic~~*Digital* access system" means a system capable of making data accessible by means of an information technology ~~facility in a voice, video, or electronic data form, including but not limited to the internet~~ *resource*.

~~(7)~~*(9)* "Information technology *resource*" means *any* hardware, software, and associated services*,* ~~and infrastructure~~ *including state and third-party platforms, networks, systems, or facilities,* used to store or transmit information in any form~~, including voice, video, and electronic data~~.

~~(8)~~*(10)* "Long-range information technology capital project" means a discrete long-range information technology system or application, including the replacement or upgrade to existing systems.

~~(9)~~*(11)* "Private safety agency" has the same meaning as provided in 10-4-101.

~~(10)~~*(12)* "Public safety agency" has the same meaning as provided in 10-4-101.

~~(11)~~*(13)* "State agency" means any entity of the executive branch, including the university system.

~~(12)~~*(14)* "~~Statewide~~*State* telecommunications network" means ~~any telecommunications facilities, circuits, equipment, software, and associated contracted services~~ *information technology resources* administered by the department for the transmission of voice, video, or electronic data from one device to another."

Section 5. Section 2-17-512, MCA, is amended to read:

"**2-17-512. Powers and duties of department.** (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government, except the national guard. The department shall:

(a) encourage and foster the ~~development~~ *use* of new and innovative information technology within state government;

(b) promote, coordinate, and approve the *procurement or* development ~~and sharing~~ of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) cooperate with the office of economic development to promote economic development initiatives based on information technology;

(d) establish and enforce a state strategic information technology plan as provided for in 2-17-521;

(e) establish and enforce statewide information technology policies*, framework, controls,* ~~and~~ standards*, procedures, and guidelines*;

(f) review and approve state agency information technology plans provided for in 2-17-523;

(g) coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program planning for the approval or disapproval of information technology budget requests, including an estimate of the useful life of the asset proposed for purchase and whether the amount should be expensed or capitalized, based on state accounting policy established by the department. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

(h) staff the information technology board provided for in 2-15-1021;

(i) fund the administrative costs of the information technology board provided for in 2-15-1021;

(j) review the use of information technology resources for all state agencies;

(k) review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

(l) review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

(m) *broker,* operate*,* and maintain ~~a central computer center~~ *information technology resources* for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(n) operate and maintain a ~~statewide~~ *state* telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(o) ensure that the ~~statewide~~ *state* telecommunications network is properly maintained. The department may establish a centralized maintenance program for the ~~statewide~~ *state* telecommunications network.

(p) coordinate public safety communications on behalf of public and private safety agencies as provided for in 2-17-543 through 2-17-545;

(q) manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

(r) provide ~~electronic~~ access to *digital* information and services of the state as provided for in 2-17-532;

(s) provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

(t) establish rates and other charges for services provided by the department;

(u) accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

(v) dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;

(w) implement this part and all other laws for the use of information technology in state government;

(x) provide a biennial report to the state administration and veterans' affairs interim committee and to the legislature as provided in 5-11-210 on the information technology activities of the department; ~~and~~

(y) represent the state with public and private entities on matters of information technology~~.~~*; and*

(z) provide full oversight authority over all custom-developed code for all state agencies.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties."

Section 6. Section 2-17-513, MCA, is amended to read:

"**2-17-513. Duties of board.** The board shall:

(1) provide a forum to:

(a) guide state agencies, the legislative branch, the judicial branch, and local governments in the development and deployment of intergovernmental information technology resources;

(b) share information among state agencies, local governments, and federal agencies regarding the development of information technology resources;

(2) advise the department:

(a) in the development of cooperative contracts for the purchase of information technology resources;

(b) regarding the creation, management, and administration of ~~electronic~~ *digital* government services and information on the internet;

(c) regarding the administration of ~~electronic~~ *digital* government services contracts;

(d) on the priority of government services to be provided ~~electronically~~ *digitally*;

(e) on convenience fees prescribed in 2-17-1102 and 2-17-1103, if needed, for ~~electronic~~ *digital* government services; and

(f) on any other aspect of providing ~~electronic~~ *digital* government services;

(3) review and advise the department on:

(a) statewide information technology ~~standards and policies~~ *policies, framework, controls, standards, procedures, and guidelines*;

(b) the state strategic information technology plan;

(c) major information technology budget requests;

(d) rates and other charges for services established by the department as provided in 2-17-512(1)(t);

(e) requests for exceptions as provided for in 2-17-515;

(f) notification of proposed exemptions by the university system and office of public instruction as provided for in 2-17-516;

(g) action taken by the department as provided in 2-17-514(1) for any activity that is not in compliance with this part;

(h) the implementation of major information technology projects and advise the respective governing authority of any issue of concern to the board relating to implementation of the project; and

(i) financial reports, management reports, and other data as requested by the department;

(4) study state government's present and future information technology needs and advise the department on the use of emerging technology in state government;

(5) request information and reports that it considers necessary from any entity using or having access to the ~~statewide~~ *state* telecommunications network or ~~central computer center~~ *information technology resources*;

(6) assist in identifying, evaluating, and prioritizing potential departmental and interagency ~~electronic~~ *digital* government services;

(7) serve as a central coordination point for ~~electronic~~ *digital* government services provided by the department and other state agencies;

(8) study, propose, develop, or coordinate any other activity in furtherance of ~~electronic~~ *digital* government services as requested by the governor or the legislature; and

(9) prepare and submit to the state administration and veterans' affairs interim committee in accordance with 5-11-210 a report including but not necessarily limited to a summary of the board's activities, a review of the electronic government program established under part 11 of this chapter, and any key findings and recommendations that the board presented to the department."

Section 7. Section 2-17-514, MCA, is amended to read:

"**2-17-514. Department -- enforcement responsibilities.** (1) If the department determines that an agency is not in compliance with the state strategic information technology plan provided for in 2-17-521, the agency information technology plan provided for in 2-17-523, or the statewide information technology policies*, framework, controls,* ~~and~~ standards*, procedures, and guidelines* provided for in *2-17-505 and* 2-17-512, the department may cancel or modify any contract, project, or activity that is not in compliance.

~~(2) Prior to taking action provided for in subsection (1), the department shall review with the board any activities that are not in compliance.~~

(2) If the department determines that an agency is not in compliance with the state security policies, framework, controls, standards, procedures, and guidelines provided for in 2-17-534, the department may take appropriate action, in its sole discretion, up to and including terminating the information technology resource and requiring the use of an alternative information technology resource.

(3) Any contract entered into by an agency that includes information technology resources must include language developed by the department that references the department's enforcement responsibilities provided for in subsection (1). A contract that does not contain the required language is considered to be in violation of state law and is voidable pursuant to subsection (1). The language developed by the department may not be varied pursuant to 18-4-224."

Section 8. Section 2-17-515, MCA, is amended to read:

"**2-17-515. Granting exceptions to state agencies.** Subject to 2-17-516, the department may grant exceptions to any policy, standard, or other requirement of this part if it is in the best interests of the state of Montana. The department shall inform the ~~board~~ *governor*, the office of budget and program planning, and the legislative finance committee of all exceptions that are granted and of the rationale for granting the exceptions. The department shall maintain written documentation that identifies the terms and conditions of the exception and the rationale for the exception. If an exception is granted, the department shall provide the written documentation in accordance with 5-11-210."

Section 9. Section 2-17-516, MCA, is amended to read:

"**2-17-516. Exemptions -- department of justice -- secretary of state -- university system -- *state auditor* -- office of public instruction -- national guard.** (1) Unless the proposed activities would detrimentally affect the operation of ~~the central computer center or the statewide~~ *any information technology resource or the state* telecommunications network, the office of public instruction*, the office of the state auditor,* and the secretary of state are exempt from 2-17-512(1)(k) and (1)(l).

(2) Unless the proposed activities would detrimentally affect the operation of ~~the central computer center or the statewide~~ *any information technology resource or the state* telecommunications network, the department of justice and the university system are exempt from:

(a) the enforcement provisions of 2-17-512(1)(d) and (1)(e) and 2-17-514;

(b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;

(c) the budget approval provisions of 2-17-512(1)(g); and

(d) the provisions of 2-17-512(1)(k) and (1)(l).

(3) ~~The department, upon notification of proposed activities by the~~ *The* department of justice, the secretary of state, the university system, ~~or~~ *the office of the state auditor, and* the office of public instruction~~,~~ *shall notify the department of proposed activities by using the department's approved process, and the department* shall determine if ~~the central computer center or the statewide~~ *any information technology resource or the state* telecommunications network would be detrimentally affected by the proposed activity.

(4) (a) For purposes of this section, a proposed activity affects the operation of ~~the central computer center or the statewide~~ *any information technology resource or the state* telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of ~~the central computer center or the statewide~~ *any information*

technology resource or the state telecommunications network or fails to meet the minimum security policies and standards set by the department.

(b) Potential loss of revenue from fees paid by the department of justice, the secretary of state, the university system, *the office of the state auditor,* or the office of public instruction for not utilizing services offered by the department are not considered a detrimental effect to ~~the statewide telecommunications network or central computer center~~ *any information technology resource or the state telecommunications network*. If the department of justice, the secretary of state, the university system, *the office of the state auditor,* or the office of public instruction does not utilize a service program after the department's rate was set for the biennium, the agency shall continue to pay any fees associated with the service or program for the remainder of the biennium.

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) When reviewing proposed activities of the department of justice *or the office of the state auditor*, the department shall consider and make reasonable allowances for the unique safety and security needs and characteristics of the department of justice *or the office of the state auditor* to communicate and share data with federal, state, and local law enforcement entities.

(8) Section 2-17-512(1)(u) may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(9) The national guard, as defined in 10-1-101(3), is exempt from 2-17-512."

Section 10. Section 2-17-521, MCA, is amended to read:

"**2-17-521. State strategic information technology plan -- biennial report.** (1) The department shall prepare a state strategic information technology plan. The department shall seek the advice of the board in the development of the plan.

(2) The plan must:

(a) reflect the policies as set forth in 2-17-505 *and 2-17-512* and be in accordance with statewide ~~standards and~~ policies*, framework, controls, standards, procedures, and guidelines* established by the department;

(b) establish the statewide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services; and

(c) establish the strategic direction for how state agencies will develop and use information technology resources to provide state government services.

(3) The department shall update the plan as necessary. The plan and any updates must be distributed as provided in 2-17-522.

(4) The department shall prepare a biennial report on information technology based on agency information technology plans and performance reports required under 2-17-524 and other information considered appropriate by the department. The biennial report must include:

(a) an analysis of the state's information technology infrastructure, including its value, condition, and capacity;

(b) an evaluation of performance relating to information technology;

(c) an assessment of progress made toward implementing the state strategic information technology plan;

(d) an inventory of ~~state information services, equipment, and proprietary software~~ *information technology resources*;

(e) agency budget requests for major projects; and

(f) other information as determined by the department or requested by the governor or the legislature."

Section 11. Section 2-17-523, MCA, is amended to read:

"**2-17-523. Agency information technology plans -- policy.** (1) Each state agency is required to develop and maintain an agency information technology plan. The agency information technology plans must reflect the content and format requirements specified in 2-17-524.

(2) An agency information technology plan must be submitted to and approved by the department as described in 2-17-527.

(3) New investments in information technology *resources* can be included in the governor's budget only if the ~~project is contained in the approved~~ *technology is in the* agency information technology plan *and is in support of the state information technology strategic plan*."

Section 12. Section 2-17-524, MCA, is amended to read:

"**2-17-524. Agency information technology plans -- form and content -- performance reports.** (1) Each agency's information technology plan must include but is not limited to the following:

(a) a statement of the agency's mission, goals, and objectives for information technology, including a discussion of how the agency uses or plans to use information technology to provide mission-critical services to Montana citizens and businesses;

(b) an explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan required in 2-17-521;

(c) a baseline profile of the agency's current information technology resources and capabilities that:

(i) includes sufficient information to fully support state-level review and approval activities; and

(ii) will serve as the basis for subsequent planning and performance measures;

(d) an evaluation of the baseline profile that identifies real or potential deficiencies or obsolescence of the agency's information technology resources and capabilities;

(e) a list of new ~~projects~~ *technology strategies* and resources required to meet the objectives of the agency's information technology plan. The investment required for the new projects and resources must be developed using life-cycle cost analysis, including the initial investment, maintenance, and replacement costs, and must fulfill or support an agency's business requirements.

(f) when feasible, estimated schedules and funding required to implement identified projects; and

(g) any other information required by law or requested by the department, the governor, or the legislature.

(2) Each agency's information technology plan must project activities and costs over a 6-year time period, consisting of the biennium during which the plan is written or updated and the 2 subsequent bienniums.

(3) Each agency shall prepare and submit to the department a biennial performance report that evaluates progress toward the objectives articulated in its information technology plan. The report must include:

(a) an evaluation of the agency's performance relating to information technology;

(b) an assessment of progress made toward implementing the agency information technology plan; and

(c) an inventory of agency information ~~services, equipment, and proprietary software~~ *technology resources*.

(4) State agencies shall prepare agency information technology plans and biennial performance reports using standards, elements, forms, and formats specified by the department."

Section 13. Section 2-17-526, MCA, is amended to read:

"**2-17-526. Information technology project budget summary.** (1) (a) The office of budget and program planning, in cooperation with the department, shall prepare a statewide summary of:

(i) proposed major new information technology ~~projects~~ *strategic objectives* contained in the state budget; and

(ii) proposed major information technology ~~projects~~ *purchases or implementation* impacting another state agency or branch of government to be funded within the current operating budgets, including replacement of or upgrade to existing systems.

(b) The office of budget and program planning and the department shall jointly determine the criteria for classifying a project as a major information technology project.

(2) The information technology ~~project~~ *strategic objective* summary must include:

(a) a listing by institution, agency, or branch of all proposed major information technology ~~projects~~ *purchases or implementations* described in subsection (1). Each proposed ~~project~~ *purchase or implementation* included on the list must include:

(i) a description of what would be accomplished by completing the ~~project~~ *purchase or implementation*;

(ii) a list of the existing information technology applications for all branches of government that may be impacted by the ~~project~~ *purchase or implementation*;

(iii) an estimate, prepared in consultation with the impacted agencies, of the costs and resource impacts on existing information technology applications;

(iv) the estimated cost of the ~~project~~ *purchase or implementation*;

(v) the source for funding the ~~project~~ *purchase or implementation*, including funds within an existing operating budget or a new budget request; and

(vi) the estimated cost of operating information technology ~~systems~~ *resources*.

(b) a listing of internal service rates proposed for providing information technology services. Each internal service rate included on the list must include:

(i) a description of the services provided; and

(ii) a breakdown, aggregated by fund type, of requests included in the state budget to support the rate.

(c) any other information as determined by the budget director or the department or as requested by the governor or the legislature.

(3) The information technology project summary must be presented to the legislative fiscal analyst in accordance with 17-7-111(4)."

Section 14. Section 2-17-532, MCA, is amended to read:

"**2-17-532. Establishment.** (1) The department shall establish and maintain appropriate ~~electronic access systems~~ *information technology resources* for state agencies ~~to use to provide direct electronic~~ *for use in* access to information and services by citizens, businesses, and other government entities. State agencies shall establish ~~electronic~~ *digital* access systems that meet minimum technical standards established by the department. Agencies

involved in communicating information or providing services to the public shall use these systems to provide appropriate information to the public, including but not limited to:

(a) descriptions of agency functions, including contact information;

(b) agency program services provided to citizens, businesses, and other government entities;

(c) environmental assessments;

(d) rulemaking notices;

(e) board vacancy notices as required by 2-15-201;

(f) agency reports mandated by statute;

(g) parks reports required by 23-1-110;

(h) requests for bids or proposals; and

(i) public meeting notices and agendas.

(2) The purpose of ~~electronic~~ *digital* access systems is to encourage the practice of providing for direct citizen, business, and other government entity access to state ~~computerized information and services~~ *information technology resources*."

Section 15. Section 2-17-533, MCA, is amended to read:

"**2-17-533. Responsibilities.** (1) The department shall:

(a) establish policies, *framework, controls,* standards, ~~and~~ procedures*, and guidelines* for the ~~electronic~~ *digital* access systems;

(b) establish appropriate services to support state agencies' use of the ~~electronic~~ *digital* access systems; and

(c) develop user-friendly systems for entities regularly interacting with state government, including but not limited to citizens, businesses, and other government entities, and promote the systems' use to reduce ~~copying and mailing~~ costs for state government and as a means to obtain information and services faster and in a more cost-effective manner.

(2) The department shall provide security to protect the integrity of its ~~electronic~~ *digital* access systems.

(3) Each department is responsible for ensuring the integrity and appropriateness of the information that it places in the ~~electronic~~ *digital* access systems.

(4) The department shall provide for an equitable method for recovering the cost of operating the ~~electronic~~ *digital* access systems that the department provides."

Section 16. Section 2-17-534, MCA, is amended to read:

"**2-17-534. Security responsibilities of department.** The department is responsible for providing centralized management and coordination of state policies for security of data and information technology resources and shall:

(1) establish and maintain the minimum ~~security standards and~~ policies*, framework, controls, standards, procedures, and guidelines* to implement 2-15-114, including the physical security of ~~the central computer center, statewide telecommunications network, and backup facilities consistent with these standards~~ *information technology resources and the state telecommunications network*;

(2) establish guidelines to assist agencies in identifying information technology personnel occupying positions of special trust or responsibility or sensitive locations;

(3) establish standards and policies for the exchange of data between any agency information technology resource and any other state agency, private entity, or public entity to ensure that exchanges do not jeopardize data security and confidentiality;

(4) coordinate and provide for a training program regarding security of data and information technology resources to serve governmental technical and managerial needs;

(5) include appropriate security requirements in the specifications for solicitation of state contracts for procuring data and information technology resources; and

(6) ~~upon~~ *on* request, provide technical and managerial assistance relating to information technology security."

Section 17. Section 2-17-546, MCA, is amended to read:

"**2-17-546. Exemption of criminal justice information network -- exception.** The provisions of this part do not apply to the criminal justice information network or its successor except for the provisions dealing with the purchase, maintenance, and allocation of telecommunication ~~facilities~~ *service delivery*. However, the department of justice shall cooperate with the department to coordinate ~~the~~ telecommunications ~~networks~~ *services* of the state."

Section 18. Section 2-17-551, MCA, is amended to read:

"**2-17-551. Definitions.** As used in 2-17-550 through 2-17-553, the following definitions apply:

(1) "Collect" means the gathering of personally identifiable information about a user of an internet service, online service, or website by or on behalf of the provider or operator of that service or website by any means, direct or indirect, active or passive, including:

(a) an online request for the information by the provider or operator, regardless of how the information is transmitted to the provider or operator;

(b) the use of an online service to gather the information; or

(c) tracking or use of any identifying code linked to a user of a service or website, including the use of cookies.

(2) "Governmental entity" means the state and political subdivisions of the state.

(3) "Government ~~website~~ operator" or "operator" means a governmental entity that operates a website ~~located on the internet or an online service and~~ *or social media presence or uses any digital means of providing digital services* that collects or maintains personal information from or about the users of or visitors to the website or online service or on whose behalf information is collected or maintained.

(4) "Internet" means, collectively, the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that use the transmission control protocol/internet protocol or any predecessor or successor protocols to communicate information of all kinds by wire or radio.

(5) "Online" means any activity regulated by 2-17-550 through 2-17-553 that is effected by active or passive use of an internet connection, regardless of the medium by or through which the connection is established.

(6) "Personally identifiable information" means individually identifiable information about an individual collected online, including:

(a) a first and last name;

(b) a residence or other physical address, including a street name and name of a city or town;

(c) an e-mail address;

(d) a telephone number;

(e) a social security number; or

(f) unique identifying information that an internet service provider or a government ~~website~~ operator collects and combines with any information described in subsections (6)(a) through (6)(e).

(7) "Political subdivision" means any county, city, municipal corporation, school district, or other political subdivision or public corporation.

(8) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state."

Section 19. Section 2-17-552, MCA, is amended to read:

"**2-17-552. Collection of personally identifiable information -- requirements.** (1) A government ~~website~~ operator may not collect personally identifiable information online from a ~~website~~ user unless the operator complies with the provisions of this section.

(2) *(a)* A government ~~website~~ operator shall ensure ~~that the website~~ *the information delivery system or platform*:

~~(a)~~*(i)* identifies who operates the ~~website~~ *system*;

~~(b)~~*(ii)* provides ~~the address and telephone number at which the operator may be contacted as well as an electronic~~ *both physical and electronic* means for contacting the operator; and

~~(c)~~*(iii)* generally describes the operator's information practices, including policies to protect the privacy of the user and the steps taken to protect the security of the collected information.*; and*

(b) If the department determines that an agency is not in compliance with the state security policies, framework, controls, standards, procedures, and guidelines provided for in 2-17-534, the department may take appropriate action, in its sole discretion, up to and including terminating the information technology resource and requiring the use of an alternative information technology resource.

(3) In addition to the requirements of subsection (2)*(a)*, if the personally identifiable information may be used for a purpose other than the express purpose ~~of the website~~ *for the collection* or may be given or sold to a third party, except as required by law, then the operator shall ensure that the ~~website~~ *information technology resource* includes:

(a) a clear and conspicuous notice to the user that the information collected could be used for other than the purposes of the ~~website~~ *collection*;

(b) a general description of the types of third parties that may obtain the information; and

(c) a clear, conspicuous, and easily understood online procedure requiring an affirmative expression of the user's permission before the information is collected."

Section 20. Section 2-17-1101, MCA, is amended to read:

"**2-17-1101. Short title.** This part may be cited as the "Montana ~~Electronic~~ *Digital* Government Services Act"."

Section 21. Section 2-17-1102, MCA, is amended to read:

"**2-17-1102. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Convenience fee" means a fee charged to recover the costs of providing ~~electronic~~ *digital* government services.

(2) "Costs" means the overall costs that the department may incur to provide ~~electronic~~ *digital* government services, including the costs of contracts entered into with private entities to assist in providing ~~electronic~~ *digital* government services.

(3) "Department" means the department of administration provided for in 2-15-1001.

(4) "Infrastructure" means the underlying technology necessary to provide ~~electronic~~ *digital* government services."

Section 22. Section 2-17-1103, MCA, is amended to read:

"**2-17-1103. Responsibilities of department for ~~electronic~~ *digital* government.** (1) The department shall:

(a) provide the ability for state agencies to offer ~~electronic~~ *digital* government services by providing a reasonable and secure infrastructure;

(b) provide a point of entry for ~~electronic~~ *digital* government services to achieve a single face of government;

(c) encourage a common look and feel for all ~~electronic~~ *digital* government services for the benefit of the customers of the services;

(d) set technological standards for ~~electronic~~ *digital* government services;

(e) use technology that enables the greatest number of customers to obtain access to ~~electronic~~ *digital* government services;

(f) promote the benefits of ~~electronic~~ *digital* government services through educational, marketing, and outreach initiatives;

(g) promote transparency in information management; and

(h) share and coordinate information with political subdivisions whenever possible.

(2) To fulfill the responsibilities in subsection (1), the department may contract with private entities. The department may charge convenience fees and may allow private entities to collect the convenience fees on selected ~~electronic~~ *digital* government services in order to provide funding for the support and furtherance of ~~electronic~~ *digital* government services.

(3) The department or a private entity under a contract as provided in subsection (2) may not use any data associated with providing ~~electronic~~ *digital* government services for any purpose that is not provided for by law."

Section 23. Section 2-18-101, MCA, is amended to read:

"**2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Base salary" means the base hourly pay rate annualized paid to an employee, excluding overtime and longevity.

(3) "Benchmark" means a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to classify the occupation.

(4) "Blue-collar pay plan" means a strictly negotiated classification and pay plan consisting of unskilled or skilled labor, trades, and crafts occupations.

(5) "Board" means the board of personnel appeals established in 2-15-1705.

(6) "Broadband classification plan" means a job evaluation method that measures the difficulty of the work and the knowledge or skills required to perform the work.

(7) "Broadband pay plan" means a pay plan using a pay hierarchy of broad pay bands based on a classification plan, including market midpoint and occupational wage ranges.

(8) "Compensation" means the annual or hourly wage or salary and includes the longevity allowance provided in 2-18-304 and leave and holiday benefits provided in part 6 of this chapter.

(9) "Competencies" means sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a position.

(10) "Department" means the department of administration created in 2-15-1001.

(11) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104.

(b) The term does not include a student intern.

(12) "Job evaluation factor" means a measure of the complexities of the predominant duties of a position.

(13) "Job sharing" means the sharing by two or more persons of a position.

(14) "Market midpoint" means the median base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(15) "Occupation" means a generalized family of positions having substantially similar duties and requiring similar qualifications, education, and experience.

(16) "Occupational wage range" means a range of pay, including a minimum, market midpoint, and maximum salary, for a specific occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation. The salary for an employee may be less than the minimum salary.

(17) "Pay band" means a wide salary range covering a number of different occupations. Pay bands are used for reporting and analysis purposes only.

(18) "Pay progression" means a process by which an employee's compensation may be increased, based on documented factors determined by the department, to bring the employee's compensation to a higher rate within the occupational wage range of the employee.

(19) "Permanent employee" means an employee who is designated by an agency as permanent, who was hired through a competitive selection process unless excepted from the competitive process by law, and who has attained or is eligible to attain permanent status.

(20) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

(21) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(22) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(23) "Program" means a combination of planned efforts to provide a service.

(24) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(25) "Short-term worker" means a person who:

(a) may be hired by an agency without using a competitive hiring process for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into a permanent position by the agency without a competitive selection process;

(e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter; and

(f) may be discharged without cause.

(26) "Student intern" means a person who:

(a) has been accepted in or is currently enrolled in an accredited school, college, or university and may be hired by an agency in a student intern position without using a competitive selection process;

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter; and

(f) may be discharged without cause.

(27) (a) "Telework" means a flexible work arrangement ~~where~~ *in which* a designated employee may work from:

(i) home within the state of Montana or an alternative worksite within the state of Montana 1 or more days a week instead of physically traveling to a central workplace; or

(ii) an alternative worksite outside the state of Montana limited to:

(A) employees who are mental health professionals as defined in 27-1-1101 involved in psychological or psychiatric evaluations and treatment;

(B) employees engaged in providing services related to information technology *resources* as defined in 2-17-506;

(C) employees who are medical professionals involved in medical evaluations and treatment; or

(D) employees who are engaged in providing services related to economic development outside the state and whose work duties require the employees to reside out of state.

(b) The office of budget and program planning must approve a designated employee's alternative worksite outside the state of Montana before the employee begins work.

(28) "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 24. Section 7-22-2151, MCA, is amended to read:

"**7-22-2151. Cooperative agreements.** (1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following:

(a) an integrated noxious weed management plan, which must be updated biennially;

(b) a noxious weed management goals statement;

(c) a specific plan of operations for the biennium, including a budget to implement the plan; and

(d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described

in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on a state ~~electronic~~ *digital* access system."

Section 25. Section 10-3-106, MCA, is amended to read:

"**10-3-106. Communications.** (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the department of administration, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the department of administration and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the ~~statewide~~ *state* telecommunications network."

Section 26. Section 61-3-346, MCA, is amended to read:

"**61-3-346. County motor vehicle computer committee.** (1) There is a county motor vehicle computer committee.

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

(3) The committee consists of:

(a) an employee of the department of ~~administration, appointed by the director of the department~~ *justice information technology division, appointed by the attorney general*;

(b) two county treasurers, appointed by the Montana county treasurers association; and

(c) two employees of the department of justice, appointed by the attorney general."

Section 27. Section 61-3-347, MCA, is amended to read:

"**61-3-347. Duties of county motor vehicle computer committee.** (1) The county motor vehicle computer committee shall:

(a) establish the requirements and specifications for the county motor vehicle computer system to be used by county treasurers and the department of justice to register and renew the registration of motor vehicles, boats, snowmobiles, and off-highway vehicles;

(b) approve the purchase of computer equipment, including peripherals, to be used for the registration and renewal of the registration of motor vehicles, boats, snowmobiles, and off-highway vehicles;

(c) approve the procedures for the development of the county motor vehicle computer system provided for in 61-3-345 and for training in the use of that system.

(2) As used in this section, "computer system" means the county motor vehicle application system and does not ~~include the central computer centers~~

~~or~~ imply that the department of administration is responsible for establishing policy and operating and maintaining ~~central computer centers~~ *the county motor vehicle computer system*."

Section 28. Section 61-11-105, MCA, is amended to read:

"**61-11-105. Release of information -- fees.** (1) Subject to the limitations of this section, the department shall, upon request, furnish a person the individual Montana driving record of a driver or licensee, containing the following data:

(a) the driver's or licensee's name, driver's license number, and date of birth;

(b) driver's license status, including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee, and the license expiration date;

(c) convictions of the driver or licensee; and

(d) traffic accidents in which the driver or licensee was involved.

(2) The department may not enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver's license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported.

(3) (a) The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.

(b) The department may not disclose medical certification status, driver self-certification status, or medical certificate information from a CDLIS driver record as part of an individual Montana driving record except as expressly authorized under 49 CFR 384.225.

(4) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(5) (a) Subject to the requirements of subsection (6) and except as provided in subsection (5)(b), a fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102(7), is requested. A fee of 6 cents must be paid for each individual Montana driving record that is searched by the department to report to a requester a change in license status or conviction activity from one or more individual Montana driving records.

(b) An individual Montana driving record must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

(6) In addition to the fees required in 61-11-510(3) and subsection (5) of this section, an individual Montana driving record or any report compiled from one or more individual Montana driving records that are ~~electronically~~ *digitally* transmitted to a requester by an authorized agent as provided in 61-3-116 or through a point of entry for ~~electronic~~ *digital* government services are subject to the convenience fee provided for in 2-17-1103 or 61-3-116.

(7) The department may require a requester, other than a federal, state, or local government agency, seeking one or more individual Montana driving records or any data otherwise contained in one or more individual Montana driving records in ~~electronic~~ *digital* format to use an authorized agent as provided in 61-3-116 or a point of entry for ~~electronic~~ *digital* government services to obtain the record or data."

Section 29. Section 75-10-805, MCA, is amended to read:

"**75-10-805. State government waste reduction and recycling program.** (1) In order to progress toward achieving the waste reduction targets identified in 75-10-803, each state agency, the legislature, and the university system shall:

(a) prepare a waste reduction and recycling plan to reduce the solid waste generated by state government. This plan must be submitted to the department and must include, at a minimum, provisions for the composting of yard wastes and the recycling of office and computer paper, cardboard, used motor oil, used oil filters, and other materials produced by the state for which recycling markets exist or may be developed.

(b) establish and implement a waste reduction and recycling program; and

(c) apply computer technology to reduce the generation of waste paper through:

(i) the use of ~~electronic~~ *digital* access systems;

(ii) the transfer of information in electronic rather than paper form; and

(iii) other applications of computer technology.

(2) The plan must be evaluated every 5 years and updated as necessary."

Section 30. Section 87-1-272, MCA, is amended to read:

"**87-1-272. Future fisheries improvement program -- funding priority -- reports required.** (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) When projects are suggested by the future fisheries review panel, the department shall, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state ~~electronic~~ *digital* access system to ensure public access to the report.

(b) The department shall also present a detailed report to the legislature in accordance with 5-11-210 on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program.

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees."

Approved May 3, 2023

CHAPTER NO. 366

[HB 115]

AN ACT GENERALLY REVISING LAWS RELATED TO LICENSING BOARDS; CONSOLIDATING AND CLARIFYING PENALTIES FOR UNLICENSED PRACTICE; ESTABLISHING A POLICY ALLOWING THE DEPARTMENT TO ISSUE CEASE AND DESIST ORDERS; PROVIDING FOR UNIFORM CIVIL PENALTIES FOR VIOLATIONS; ALLOCATING PENALTIES TO SPECIAL REVENUE AND GENERAL FUNDS; ALLOWING BOARDS AND THE DEPARTMENT OF LABOR AND INDUSTRY TO ISSUE INJUNCTIONS; PROVIDING FOR CRIMINAL PENALTIES; ESTABLISHING ACTS THAT ARE CONSIDERED UNPROFESSIONAL CONDUCT FOR PHARMACISTS; REPEALING PENALTY PROVISIONS IN INDIVIDUAL BOARD STATUTES; AMENDING SECTIONS 37-7-1513, 37-33-501, 37-60-301, 37-68-316, 37-69-310, 37-69-402, 37-72-101, AND 37-73-226, MCA; AND REPEALING SECTIONS 37-1-317, 37-1-318, 37-1-332, 37-3-325, 37-3-326, 37-4-326, 37-4-327, 37-4-328, 37-6-312, 37-7-323, 37-7-407, 37-7-510, 37-7-711, 37-8-443, 37-8-444, 37-9-312, 37-10-312, 37-10-313, 37-11-302, 37-11-322, 37-12-324, 37-13-315, 37-13-316, 37-14-323, 37-15-322, 37-15-323, 37-16-413, 37-17-312, 37-17-313, 37-18-501, 37-18-502, 37-18-703, 37-19-501, 37-19-831, 37-20-104, 37-24-311, 37-26-414, 37-27-325, 37-28-302, 37-29-411, 37-29-412, 37-31-334, 37-33-504, 37-34-307, 37-35-204, 37-36-205, 37-40-312, 37-47-344, 37-50-342, 37-50-401, 37-51-323, 37-51-608, 37-53-307, 37-53-506, 37-60-411, 37-65-322, 37-65-323, 37-66-322, 37-67-332, 37-68-322, 37-69-324, 37-72-102, AND 37-73-227, MCA.

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

Section 1. Cease and desist -- injunction -- criminal penalties. (1) The department may issue a cease and desist order if the department determines through the receipt of credible evidence that a person is acting, has acted, or is about to act related to a profession or occupation in Title 37:

(a) without the license required to practice the profession or occupation;

(b) with a restricted title or designation of the profession or occupation without meeting the requirements for that use; or

(c) in violation of a statute or rule of the profession or occupation.

(2) A cease and desist order issued under this section must be served pursuant to Rule 4, M.R.Civ.P. The order is effective upon service. Proof of

service constitutes notice to the person of the existence and contents of the order.

(3) The screening panel of a board or the department on behalf of a program may assess a penalty of not more than $1,000 a day for each day a cease and desist order issued under this section is violated. Fifty percent of the penalty must be deposited in the state special revenue fund of the board or program, and the remainder must be deposited in the state general fund.

(4) (a) A board, following a vote of its screening panel, or the department, on behalf of a program, may institute and maintain in the name of the state an action for injunction or another civil remedy in district court to enforce a cease and desist order issued under this section. Proof of inadequacy of a legal remedy or proof of substantial or irreparable damage from continued violation is not required.

(b) The board or department is entitled to its costs, including the costs of investigation and attorney fees, incurred in seeking a district court order under this section.

(c) A person who knowingly or purposely violates a district court injunction under this section is guilty of a felony and subject to the penalties set forth in 46-18-213.

(5) An officer, agent, partner, or member of a business entity who knowingly and personally participates in a violation of this section is subject to the penalties prescribed by this section.

(6) The remedies provided by this section are in addition to and do not limit the remedies and actions otherwise permitted or required by law.

Section 2. Section 37-7-1513, MCA, is amended to read:

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

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

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

(4) ~~The~~ *In addition to the provisions of [section 1], the* board may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general shall petition the district court to impose, assess, and recover the civil penalty.

(5) An action under subsection (3) or to enforce this part or a rule adopted under this part may be brought in the district court of any county where a violation occurs.

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

Section 3. Section 37-33-501, MCA, is amended to read:

"**37-33-501. License required -- ~~enjoining unlawful practice~~ *title protection.*** (1) A person may not practice or purport to practice massage therapy without first obtaining a license under the provisions of 37-33-502.

(2) A person who is not licensed as a massage therapist, whose license has been suspended or revoked, or whose license has lapsed and has not been revived may not use the words or letters "massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" or any other letters, words, or insignia indicating or implying that the person is a licensed massage therapist or in any way, orally, in writing, or in print or by sign, directly or by implication, purport to be a massage therapist.

~~(3) A person who knowingly violates the provisions of this section is guilty of a misdemeanor as provided in 37-33-504.~~"

Section 4. Section 37-60-301, MCA, is amended to read:

"**37-60-301. License required -- process server registration required.** (1) (a) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board.

(b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

~~(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411.~~"

Section 5. Section 37-68-316, MCA, is amended to read:

"**37-68-316. Citation and fine for failure to display license.** (1) A citation for failure to display an electrician's license or proof of licensure issued by an employee of the department must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense, unless the provisions of subsection (4)(b) apply;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) (a) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance.

(b) The board may not impose a fine for a first offense on a licensee who produces proof of licensure to the department within 5 days of the citation. In other cases, the board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who ~~refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318~~ *violates this section is also subject to the provisions of [section 1].*"

Section 6. Section 37-69-310, MCA, is amended to read:

"**37-69-310. Citation and fine for failure to display license.** (1) A citation for failure to display a plumber's license or proof of licensure issued by an employee of the department must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense, unless the provisions of subsection (4)(b) apply;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) (a) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the board within 5 business days of the date of issuance.

(b) The board may not impose a fine for a first offense on a licensee who produces proof of licensure to the department within 5 days of the citation. In other cases, the board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who ~~refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318~~ *violates this section is also subject to the provisions of [section 1].*"

Section 7. Section 37-69-402, MCA, is amended to read:

"**37-69-402. Requirements for installation of medical gas piping.** (1) ~~After April 1, 1996, a~~ *A* person may not install pipe used solely to transport gases used for medical purposes unless the person holds a valid medical gas piping installation endorsement pursuant to 37-69-401.

(2) A violation of this section is punishable pursuant to ~~37-69-324~~ *[section 1]*."

Section 8. Section 37-72-101, MCA, is amended to read:

"**37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions.** (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of labor and industry;

(d) "explosive" has the meaning provided in 61-9-102.

(3) This chapter does not apply to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules adopted under 37-72-201(1)(c) and the provisions of ~~37-72-102~~ *[section 1]* apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under 82-4-231(10)(e)."

Section 9. Section 37-73-226, MCA, is amended to read:

"**37-73-226. Failure to display license.** (1) A citation issued by an employee of the department for failure to display an elevator mechanic's license or proof of licensure must include:

(a) the time and date on which the citation is issued;

(b) the name, residential address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or

through telephone or other communication with the department, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance. The department may waive or refund the fine upon finding that the person has demonstrated acceptable proof of licensure.

(5) A person who ~~refuses to sign and accept a citation is subject to the civil penalty provided for in 37-1-318~~ *violates this section is also subject to the provisions of [section 1]*."

Section 10. Repealer. The following sections of the Montana Code Annotated are repealed:

37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.
37-1-318. Violation of injunction -- penalty.
37-1-332. Administrative proceedings to stop unlicensed practice -- board of realty regulation -- state electrical board -- board of plumbers.
37-3-325. Violations -- penalties.
37-3-326. Injunctive relief -- manner of charging violation.
37-4-326. Acts constituting misdemeanors.
37-4-327. Practicing dentistry without license -- penalty.
37-4-328. Duty of county attorney -- jurisdiction of justices' courts -- injunction.
37-6-312. Penalty.
37-7-323. Penalty -- enforcement.
37-7-407. Penalty.
37-7-510. Penalty.
37-7-711. Penalty.
37-8-443. Violation of chapter -- penalties.
37-8-444. Injunctions.
37-9-312. Violation.
37-10-312. Duty of county attorneys and attorney general.
37-10-313. Penalty for violations -- deposit of fines.
37-11-302. False oath or fraudulent representation to obtain license.
37-11-322. Penalties.
37-12-324. Penalty for violation.
37-13-315. Enjoining unlawful practice.
37-13-316. Penalty.
37-14-323. Penalty for violation.
37-15-322. Penalty.
37-15-323. Injunction of unlawful practice.
37-16-413. Penalty for unlawful practice -- injunction.
37-17-312. Penalty.
37-17-313. Injunction for unlawful practice.
37-18-501. Penalty.
37-18-502. (Temporary) Injunction.
37-18-703. (Effective January 1, 2023) Penalties.
37-19-501. Penalty provision.
37-19-831. Penalty -- injunction.
37-20-104. Unlicensed practice -- penalties.
37-24-311. Penalty.
37-26-414. Enforcement -- penalty.
37-27-325. Violation -- penalties -- injunction -- manner of charging violation.
37-28-302. Penalty.

37-29-411. Injunction.
37-29-412. Violation and penalty.
37-31-334. Penalty -- injunction.
37-33-504. Penalty.
37-34-307. Violation -- penalties -- injunction -- manner of charging violation.
37-35-204. Penalty.
37-36-205. Violation -- penalties.
37-40-312. Penalty.
37-47-344. Penalties.
37-50-342. Violation.
37-50-401. False statements by certified public accountants -- misdemeanor -- penalty.

Section 11. Repealer. The following sections of the Montana Code Annotated are repealed:
37-51-323. Penalties -- criminal -- civil.
37-51-608. Penalties -- criminal -- civil.
37-53-307. Illegal practices.
37-53-506. Criminal proceedings.
37-60-411. Penalties -- investigation -- enforcement -- review.
37-65-322. Penalty.
37-65-323. Injunction.
37-66-322. Penalty.
37-67-332. Violations -- penalties -- enforcement.
37-68-322. Penalty.
37-69-324. Penalty.
37-72-102. Penalty -- injunction.
37-73-227. Penalty.

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

Approved May 3, 2023

CHAPTER NO. 367

[HB 186]

AN ACT ALLOWING A CITY, TOWN, OR CONSOLIDATED CITY-COUNTY TO HOLD CERTAIN SPECIAL PURPOSE DISTRICT ELECTIONS ON A GENERAL MUNICIPAL ELECTION DAY; AMENDING SECTION 13-1-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-1-504, MCA, is amended to read:

"**13-1-504. Dates for special purpose district elections -- call for election.** (1) Except as provided in subsection (2), the following elections for a special purpose district must be held on the same day as the regular school election day established in 20-20-105(1), which is the first Tuesday after the first Monday in May:

(a) an election to create, alter the boundaries of, continue, or dissolve a special purpose district; and

(b) an election to fill a special purpose district office.

(2) (a) A special purpose district election that includes a question affecting district funding, such as fee assessments, bonds, or the sale or lease of property,

may be held on the day specified in subsection (1) or scheduled as a special election.

(b) A conservation district election must be held on a primary or general election day.

(c) If the special purpose district will be administered by a city, town, or consolidated city-county, the city, town, or consolidated city-county may schedule an election to create, dissolve, or continue a special purpose district on the same day as the general municipal election day.

(3) If specifically authorized by law, a special purpose district election may be held at the district's annual meeting.

(4) A special purpose district election may not be held earlier than 85 days after the date of the order or resolution calling for the election.

(5) Pursuant to 13-19-201, the governing body authorized by law to call an election shall specify in the order or resolution calling for the election whether the governing body is requesting that the election be conducted by mail."

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

Approved May 3, 2023

CHAPTER NO. 368

[HB 203]

AN ACT GENERALLY REVISING EDUCATION LAWS RELATED TO OUT-OF-DISTRICT ATTENDANCE; REVISING OUT-OF-DISTRICT AND TUITION LAWS TO INCREASE EDUCATIONAL CHOICE AND IMPROVE TAXPAYER EQUITY; PROVIDING LIMITED CIRCUMSTANCES UNDER WHICH AN OUT-OF-DISTRICT ATTENDANCE APPLICATION MAY BE DENIED; REQUIRING THAT DISTRICTS OF RESIDENCE PAY TUITION FOR RESIDENT CHILDREN WHO ATTEND OUT OF DISTRICT; REQUIRING THE SUBMISSION OF OUT-OF-DISTRICT ATTENDANCE AGREEMENTS TO THE OFFICE OF PUBLIC INSTRUCTION; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PROVIDE AN ANNUAL REPORT; ENSURING THAT TUITION REVENUE RECEIVED BY A DISTRICT OF ATTENDANCE IS USED TO REDUCE LOCAL PROPERTY TAXES; AMENDING SECTIONS 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, AND 20-9-141, 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 20-5-320, MCA, is amended to read:

"**20-5-320. ~~Attendance with discretionary approval~~ *Out-of-district attendance by parent or guardian request with no extenuating circumstances.*** (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~~ *at the request of the child's parent or guardian as described in this section*. If the trustees ~~grant discretionary approval~~ *of the district of attendance approve* of the child's attendance in a school of the district, the parent or guardian may be ~~charged tuition and may be charged~~ *responsible* 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.

(b) 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. *Unless otherwise agreed by the district of residence and the district of attendance, the family of a nonresident child whose application for attendance has been approved is responsible for transportation of the child and the child is not an eligible transportee as defined in 20-10-101. The district of attendance may discretionarily provide transportation pursuant to 20-10-122.*

(c) The trustees of the district of attendance may adopt policies for the application process, including but not limited to reasonable timelines for the submission of applications.

(d) The trustees of the district of attendance shall serve children who are residents of the district and nonresident children seeking enrollment under 20-5-321 prior to enrolling children under this section.

(e) In reviewing and determining whether to approve an application for attendance by a nonresident child, the trustees of the district of attendance shall approve the application unless the trustees find that the impact of approval of the application will negatively impact the quality of education for resident pupils by grade level, by school, or in the district in the aggregate in one or more of the following ways:

(i) the approval would result in exceeding limits of:

(A) building construction standards pursuant to Title 50, chapter 60;

(B) capacity and ingress and egress elements, either by individual room or by school building, of any fire code authorized by Title 50, chapter 3; or

(C) evacuation elements of the district's adopted school safety plan;

(ii) the approval would impede meeting goals, standards, or objectives of quality that the trustees have previously adopted in a plan for continuous educational improvement required under rules adopted by the board of public education; or

(iii) the approval would risk jeopardizing the educational quality within the district because the nonresident child who is applying was:

(A) truant as defined in 20-5-106 in the last school district attended;

(B) expelled by another school district at any time; or

(C) suspended in another school district in any of the 3 school fiscal years preceding the school fiscal year for which attendance is requested. This subsection (2)(e)(iii)(C) does not apply to a student who is eligible for special education or related services.

(f) The trustees of a district that receives more applications than the district can accommodate under subsections (2)(e)(i) and (2)(e)(ii) may adopt and implement policy providing priority among the applications on any rational basis that prioritizes the quality of education for students who are residents of the district of attendance and the obligations of resident taxpayers.

~~(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" includes:~~

~~(A) except as provided in subsection (2)(c)(ii)(B), a parent or guardian of a student who is a nonresident of the district of choice;~~

~~(B) a parent or guardian of a student who lives in a location where one unified school system as provided in 20-6-312 is the district of residence for grades K-8 and another unified school system as provided in 20-6-312 is the district of residence for grades 9-12; and~~

~~(C) 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)~~*(3)* 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. *The tuition requirements under 20-5-323 and 20-5-324 apply to agreements under this subsection.* 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 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)~~*(4)* 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 2. Section 20-5-321, MCA, is amended to read:

"**20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever *any of the following extenuating circumstances exist*:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation;

(b) (i) the child resides in a location where, because of geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324~~(5)(a)(ii)~~*(4)(a)(ii)* until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule ~~upon~~ *on* a decision of the county transportation committee without an appeal being filed.

(c) (i) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c)(i) may continue to attend the elementary school after the other child has left the high school.

(ii) the child is a member of a family that is required to send another child outside of the high school district to attend elementary school and the child of high school age may more conveniently attend a high school where the elementary school is located, provided that the child resides more than 3 miles from a high school in the resident district or that the parent is required to move to the high school district where the elementary school is located to enroll another child in elementary school. A child enrolled in a high school pursuant to this subsection (1)(c)(ii) may continue to attend the high school after the other child has left the elementary school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for ~~tuition and~~ transportation as provided in 20-5-323 and 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" includes:~~

~~(A) except as provided in subsection (2)(c)(ii)(B), a parent or guardian of a student who is a nonresident of the district of choice;~~

~~(B) a parent or guardian of a student who lives in a location where one unified school system as provided in 20-6-312 is the district of residence for grades K-8 and another unified school system as provided in 20-6-312 is the district of residence for grades 9-12;~~

~~(C) the trustees of the district of residence; and~~

~~(D) a state agency.~~

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 3. Section 20-5-322, MCA, is amended to read:

"**20-5-322. Residency determination -- notification -- appeal for attendance agreement.** (1) ~~In considering an out-of-district attendance agreement~~ *For the purposes of 20-5-320 through 20-5-324*, except as provided in 20-9-707, ~~the trustees shall determine the~~ *a* child's district of residence *must be determined* on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of ~~choice~~ *attendance* shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees *of the district of attendance* shall*:*

(a) provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence. *In the case of a disapproval, the trustees shall provide the specific allowable reason for*

the disapproval pursuant to 20-5-320(2)(e) or 20-5-321(4) and supporting documentation.

~~(4)~~*(b)* ~~Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward~~ *for an approved agreement, provide a copy of* the completed agreement to the county superintendent of schools of the county of residence, ~~the trustees of the district of choice, and the parent or guardian~~ *the county superintendent of schools of the county of attendance, and the superintendent of public instruction*

~~(5)~~*(4)* If an out-of-district attendance agreement is disapproved or no action is taken, the parent *or guardian* may appeal the disapproval or lack of action to the county superintendent *of the district of attendance* and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies ~~in this title~~ *pursuant to 20-3-107 and 20-3-210.*

~~(6)~~*(5)* For purposes of payment under 20-5-324(2), a nonresident student who becomes a resident by reaching 18 years of age during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year."

Section 4. Section 20-5-323, MCA, is amended to read:

"**20-5-323. Tuition and transportation -- rates.** (1) Except as provided in subsections (2) through (5), whenever a child ~~has approval to attend~~ *enrolls in and attends* a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the ~~rate of tuition charged for a Montana resident student may not exceed 20%~~ *district of residence shall pay the district of attendance a percentage equal to the lesser of the percentage of either school district's adopted general fund budget funded by BASE and over-BASE property tax levies in the year of attendance not to exceed 35.3%* of the tuition per-ANB amount for the year of attendance *as described in 20-5-324.*

(2) Except for the tuition paid by the district of residence under 20-5-324(2)(b), the tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils. The rules must provide:

(a) that tuition amounts must be reduced by the funding generated by the district of attendance due to the child's attendance; and

(b) an option for tuition set at the actual unique costs of providing a free appropriate public education.

(3) The state-paid tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) in addition to the tuition paid by the district of residence under 20-5-324(2)(b) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district~~, person,~~ or entity responsible for the tuition payments shall approve an agreement for the tuition cost;

(b) for a Montana resident student, 120% of the tuition per-ANB amount, received in the year for which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this ~~section~~ *subsection (3)* may not exceed $2,500 per student.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district

budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost for each student in the child's district of residence or 35 cents a mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year.

(7) As used in this section, "tuition per-ANB amount" means the applicable per-ANB maximum rate established in 20-9-306, plus ~~the sum of:~~

~~(a) the data for achievement payment rate under 20-9-306;~~

~~(b) the Indian education for all payment rate under 20-9-306; and~~

~~(c)~~ the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321."

Section 5. Section 20-5-324, MCA, is amended to read:

"**20-5-324. Tuition ~~report and~~ payment provisions -- *state obligations -- district obligations -- financing -- reporting.*** (1) In order to be eligible to receive *state reimbursement or* payment under subsection (2)*(a)*, the trustees of a district shall report to the superintendent of public instruction by June 30 the following information for the concluding school fiscal year:

(a) the name and district of residence of each child who attended a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e);

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

(d) the names, districts of attendance, and amount of tuition paid by the district for resident students attending public schools out of state; and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools.

(2) (a) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

(i) except as provided in subsection (2)(b) of this section, pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c) *of this section*, prorated for the actual days of enrollment;

(ii) determine the total per-ANB entitlement for which the district of residence would have been eligible if the students reported in subsections (1)(d) and (1)(e) *of this section* had been enrolled in the resident district in the prior year; and

(iii) reimburse the district of residence for the state portion of the per-ANB entitlement for each student reported in subsections (1)(d) and (1)(e) *of this*

section, not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.

(b) The district of residence for each child reported under the provisions of subsection (1)(a) of this section shall pay the district of attendance ~~twice the maximum~~ *the* tuition rate under 20-5-323(1) prorated for the actual days of enrollment. The superintendent of public instruction is only responsible for any additional tuition amount pursuant to 20-5-323(2) and (3).

(3) ~~By August~~ *Whenever a child enrolls in and attends a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, by July* 15 following the year of attendance, the district of attendance shall notify the district of residence of an obligation under ~~subsection (2)(b)~~ *20-5-323*. ~~By December 31 following the year of attendance, the district of residence shall pay at least one-half of any tuition obligation established under subsection (2)(b) out of the money realized to date from the district tuition fund levy or from the district's general fund or any other legally available fund in the discretion of the trustees. The remaining tuition obligation must be paid by June 15 of the school fiscal year following the year of attendance.~~

~~(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.~~

~~(5)~~*(4)* (a) (i) When a child ~~has approval to attend~~ *attends* a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321~~(1)(a) or (1)(b)~~ or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance ~~the~~ *any* tuition amount *required under 20-5-323* from the levy authorized to support the district tuition fund or from the district's general fund or any other legally available fund in the discretion of the trustees and any transportation amount from the levy authorized to support the transportation fund or from the district's general fund or any other legally available fund in the discretion of the trustees.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under subsection ~~(5)(a)(i)~~ *(4)(a)(i)*. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

(iii) In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil, a school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in the district. The amount of the levy imposed for the costs associated with educating each child with a disability under this subsection ~~(5)(a)(iii)~~ *(4)(a)(iii)* is limited to the actual cost of service under the child's individualized education program minus:

(A) the student's state special education payment;

(B) the student's federal special education payment;

(C) the student's per-ANB amount;

(D) the prorated portion of the district's basic entitlement for each qualifying student; and

(E) the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for each qualifying student.

(b) When a child has approval to attend a school outside the child's district of residence because of a parent's or guardian's request under the provisions

of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child ~~shall finance the tuition and transportation amount~~ *is responsible for transportation unless otherwise agreed to in the out-of-district attendance agreement*.

~~(6)~~*(5)* (a) Except as provided in ~~subsections (6)(b) through (6)(d)~~ *subsection (5)(b)*, the district *of attendance* shall *anticipate and* credit tuition receipts to the district general fund*, to reduce the general fund net levy requirement first to the BASE budget and any remaining to the over-BASE budget pursuant to 20-9-141,* and transportation receipts to the transportation fund. *In order to provide local property tax reduction for the tuition amount received under 20-5-323(1), the amount of the reduction in the BASE budget mills levied as a result of anticipated tuition payments 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.*

~~(b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.~~

~~(c)~~*(b)* Any tuition receipts received ~~for the current school fiscal year~~ for a pupil who is a child with a disability *under 20-5-323(2) or for a student without disabilities who requires a program with costs that exceed the average district costs under 20-5-323(3)* that exceed the tuition amount received for a pupil without disabilities ~~may~~ *must* be deposited in the district miscellaneous programs fund and must be used ~~for that year~~ in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

~~(d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.~~

~~(7)~~*(6)* The reimbursements paid under subsection (2)(a)(iii) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

~~(8)~~*(7)* The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422.

(8) In accordance with 5-11-210, the superintendent of public instruction shall report annually to the education interim committee on out-of-district attendance under 20-5-320 through 20-5-324 in the prior school fiscal year. The report must include the following for each school district:

(a) the total enrollment of the district;

(b) the number of nonresident students served by the district under out-of-district attendance agreements; and

(c) the number of resident students served by other school districts under out-of-district attendance agreements."

Section 6. 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) *after first applying anticipated tuition revenue to the BASE budget under subsection (2)(b)(i),* any *remaining* 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:

(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

(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) *(i)* 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*; and*

(ii) if applicable, subtracting the result of dividing 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), that are 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 7. Effective date. [This act] is effective July 1, 2024.

Section 8. Applicability. [This act] applies to school years and years of attendance beginning on or after July 1, 2024.

Approved May 3, 2023

CHAPTER NO. 369

[HB 215]

AN ACT REVISING THE DEFINITION OF LOCAL GOVERNING BODY IN RELATION TO LOCAL HEALTH BOARDS; AMENDING SECTION 50-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-1-101, MCA, is amended to read:

"**50-1-101. Definitions.** Unless the context indicates otherwise, in chapter 2 and this chapter, the following definitions apply:

(1) "Communicable disease" means an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) "Condition of public health importance" means a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.

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

(4) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.

(5) "Institutional controls" means legal or regulatory mechanisms designed to protect public health and safety that:

(a) limit access to or limit or condition the use of environmentally contaminated property or media;

(b) provide for the protection or preservation of environmental cleanup measures; or

(c) inform the public that property or media is or may be environmentally contaminated.

(6) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected with a communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

(7) "Local board of health" or "local board" means a county, city, city-county, or district board of health.

(8) "Local governing body" or "governing body" means *an entity whose voting members are all elected officials and that operates as or oversees a local board of health. A local governing body may include*:

(a) the local board of health if all voting members of the local board of health are elected officials;

~~(a)~~*(b)* the board of county commissioners that oversees a county local board of health;

~~(b)~~*(c)* the elected governing body of a city that oversees a city local board of health; or

~~(c)~~*(d)* the entity identified as the governing body as established in the bylaws, interlocal agreement, or memorandum of understanding creating a city-county local board of health or a local district board of health.

(9) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board of health. With regard to the exercise of the duties and authorities of a local health officer, the term may include an authorized representative of the local health officer.

(10) "Local public health agency" means an organization operated by a local government in the state, including local boards of health or local health officers, that principally acts to protect or preserve the public health.

(11) "Physician" has the meaning provided in 37-3-102.

(12) "Public health services and functions" means those services and functions necessary to promote the conditions in which the population can be healthy and safe, including:

(a) population-based or individual efforts primarily aimed at the prevention of injury, disease, or premature mortality; or

(b) the promotion of health in the community, such as assessing the health needs and status of the community through public health surveillance and epidemiological research, developing public health policy, and responding to public health needs and emergencies.

(13) "Public health system" means state and local public health agencies and their public and private sector partners.

(14) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who have been exposed to a communicable disease and who do not show signs or symptoms of a communicable disease from nonquarantined individuals to prevent or limit the transmission of the communicable disease to nonquarantined individuals.

(15) "Screening" means diagnostic or investigative analysis or medical procedures that determine the presence or absence of or exposure to a condition of public health importance or the condition's precursor in an individual.

(16) "Testing" has the same meaning as screening."

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

Approved May 3, 2023

CHAPTER NO. 370

[HB 231]

AN ACT REVISING EDUCATION LAWS TO ELIMINATE THE CERTIFICATION STANDARDS AND PRACTICES ADVISORY COUNCIL; AMENDING SECTION 20-4-109, MCA; REPEALING SECTIONS 2-15-1522, 20-4-131, 20-4-132, AND 20-4-133, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-4-109, MCA, is amended to read:

"**20-4-109. Fees for teacher and specialist certificates.** (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed $6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $6. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used ~~in the following manner:~~

~~(a) $4~~ for expenses of the ~~certification standards and practices advisory council created in 2-15-1522;~~

~~(b) $2 to the~~ board of public education ~~and the certification standards and practices advisory council~~ for activities in support of the constitutional and statutory duties of the board ~~of public education and the certification standards and practices advisory council~~.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account."

Section 2. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-1522. Certification standards and practices advisory council.
20-4-131. Definitions.
20-4-132. Meetings -- assistance.
20-4-133. Duties of the council.

Section 3. Coordination instruction. If both House Bill No. 22 and [this act] are passed and approved, then House Bill No. 22 is void.

Section 4. Effective date. [This act] is effective July 1, 2023.

Approved May 3, 2023

CHAPTER NO. 371

[HB 242]

AN ACT REVISING ALCOHOL LAWS TO ALLOW A PERSON TO BE ISSUED UP TO SEVEN ALL-BEVERAGES LICENSES; AND AMENDING SECTIONS 16-4-205 AND 16-4-401, MCA.

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

Section 1. Section 16-4-205, MCA, is amended to read:

"**16-4-205. Limitation on number of licenses -- business in name of licensee.** (1) Subject to the provisions of 16-4-401, a person may not be issued more than ~~three~~ *seven* all-beverages licenses, with the exception of:

(a) resort retail all-beverages licenses issued under 16-4-213, which do not count toward this limit; and

(b) a secured party issued an additional all-beverages license as the result of a default. A secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance. A business may not be carried on under any license issued under this chapter except in the name of the licensee.

(2) The provisions of this section do not apply to licenses held by the Montana heritage preservation and development commission under the provisions of 16-4-305."

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

"**16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) and the application is approved, the applicant will not possess an ownership interest in more than ~~three~~ *the limit established in 16-4-205 for* establishments licensed under this chapter for all-beverages sales. However, resort retail all-beverages licenses issued under 16-4-213 do not count toward this limit.

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an applicant's spouse may possess an ownership interest in one or more manufacturer licenses;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (2)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license;

(v) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored; and

(vi) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a corporation who owns

less than 15% of the outstanding stock in that corporation except that the provisions of subsection (8) apply.

(iv) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of subsection (8) apply.

(iv) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (2)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (2)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (2)(a).

(3) In the case of a license that permits only off-premises consumption and subject to subsection (8), the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) and the application is approved, the applicant will not possess an ownership interest in more than ~~three~~ *the limit established in 16-4-205 for* establishments licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (3)(a)(v) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license; and

(vi) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a).

(ii) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (3)(a).

(ii) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (3)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (3)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (3)(a).

(4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (4)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the applicant must designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the requirements of subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (4)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (4)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (4)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (4)(a).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

(7) An applicant's source of funding must be from a suitable source. A lender or other source of money or credit may be found unsuitable if the source:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of alcoholic beverages; or

(iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business; or

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense.

(8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity applying for an all-beverages license may not, if the application were to be approved, own an interest in more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

(b) If two or more individuals through business or family relationship share in the profits or liabilities of all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages licenses will be held.

(9) (a) Except as specifically provided in this code relating to financial interests in licenses, nothing in this section applies or otherwise prohibits an applicant or licensee from obtaining personal financing from a licensed financial institution, taking advantage of consumer credit, or using a personal credit card to make purchases on behalf of a licensed entity if the applicant or licensee is reimbursed by the licensed entity within 90 days. An applicant or

individual may obtain multiple transactions up to an aggregate maximum of $100,000 with each individual transaction not to exceed $25,000 to be used on behalf of the licensed entity.

(b) A licensee's use of short-term financing of 90 days or less from institutional lenders and noninstitutional lenders does not constitute an undisclosed ownership interest in the license.

(c) It is the intent of this subsection (9) to facilitate the efficient administration of an entity licensed under this code."

Approved May 3, 2023

CHAPTER NO. 372

[HB 255]

AN ACT GENERALLY REVISING LAWS RELATED TO THE THEFT OF CATALYTIC CONVERTERS; PROVIDING RESTRICTIONS ON THE SALE OF CATALYTIC CONVERTERS; PROVIDING FOR A CRIME OF ILLEGAL TRANSPORTATION OF CATALYTIC CONVERTERS; REVISING RECORDKEEPING REQUIREMENTS FOR SALES OF CATALYTIC CONVERTERS; AMENDING SECTIONS 30-22-101 AND 30-22-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Sale of catalytic converters. (1) A seller who is not a licensed salvage metal dealer may not sell more than one catalytic converter to a salvage metal dealer a day.

(2) Unless the transaction or exchange is with another salvage metal dealer, a salvage metal dealer may not:

(a) provide any consideration to a seller of a catalytic converter until 72 hours after the most recent transaction between the salvage metal dealer and the seller; and

(b) pay more than $30 in cash, stored value device, or electronic fund transfer for any transaction that includes a catalytic converter. Additional consideration contracted for must be paid by check.

Section 2. Illegal transportation of catalytic converters. (1) Except for a person transporting vehicles or materials in conformance with the junk vehicle program provided for in Title 75, chapter 10, part 5, a person commits the offense of illegal transportation of catalytic converters if the person purposely or knowingly transports more than one catalytic converter that is not connected to a vehicle exhaust system and the person lacks a nonferrous metal acquisition record as provided in 30-22-102.

(2) A person convicted of illegal transportation of catalytic converters shall be fined an amount not to exceed $5,000 or be imprisoned for a term not to exceed 1 year, or both.

Section 3. Section 30-22-101, MCA, is amended to read:

"**30-22-101. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Nonferrous metal" means metal and metal alloys not containing significant quantities of iron or steel, including but not limited to:

(a) copper;

(b) brass;

(c) aluminum, other than aluminum cans;

(d) bronze;

(e) lead;

(f) zinc;

(g) nickel;

(h) stainless steel, including stainless steel beer kegs; and

(i) precious metals, including catalytic converters *and their component parts and materials*.

(2) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity.

(3) "Salvage metal dealer" means a person who is engaged in the business of paying, trading, recycling, or bartering for or collecting nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

(4) "Seller" means a person who sells or delivers nonferrous metal or otherwise makes nonferrous metal available to a salvage metal dealer."

Section 4. Section 30-22-102, MCA, is amended to read:

"**30-22-102. Recordkeeping.** (1) A salvage metal dealer shall:

(a) maintain a nonferrous metal acquisition record for nonferrous metal transactions *that include a catalytic converter or* that exceed $50;

(b) retain a nonferrous metal acquisition record for a period of not less than 2 years from the date of the transaction; and

(c) make nonferrous metal acquisition records available to any peace officer on demand.

(2) The nonferrous metal acquisition record required under subsection (1) must contain:

(a) the time and date of the transaction and the name of the person conducting the transaction on behalf of the salvage metal dealer;

(b) a general description, using scrap specifications recognized by the institute of scrap recycling industries, inc., of the property acquired, including the type and amount and, if readily discernible, any identifiable marks on the property;

(c) the amount of consideration given for the nonferrous metal;

(d) a photocopy or scanned copy of a current, valid driver's license, passport, or state identification card of the seller*, except that the identification copies required under this subsection (2)(d) do not apply if a check for payment is provided to a seller or transferor*~~, except that the identification copies required under this subsection (2)(d) do not apply if a check for payment is provided to a seller or transferor~~;

(e) a signature of the seller or transferor; ~~and~~

(f) a description of any motor vehicle and its license number used in the delivery of the nonferrous metal~~.~~*; and*

(g) if the transaction includes a catalytic converter, documentation showing the catalytic converter was removed from a vehicle registered to the seller."

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 30, chapter 22, part 1, and the provisions of Title 30, chapter 22, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 2].

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

Approved May 3, 2023

CHAPTER NO. 373

[HB 262]

AN ACT REVISING LOCAL GOVERNMENT FINANCIAL REPORTING AND AUDIT REQUIREMENTS; ALLOWING FOR AN ALTERNATIVE FINANCIAL REPORT FOR LOCAL GOVERNMENTS WITH A POPULATION UNDER 10,000; REMOVING THE REQUIREMENT TO WITHHOLD STATE FINANCIAL AID TO LOCAL GOVERNMENT ENTITIES WHO FAIL TO REMIT AUDIT FEES; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 2-7-503 AND 2-7-517, MCA.

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

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

"**2-7-503. Financial reports and audits of local government entities.** (1) (a) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213.

(i) The financial report must cover the preceding fiscal year *and be in a form prescribed by the department or be in an alternative form acceptable to the department as provided in subsection (1)(a)(ii),* ~~be in a form prescribed by the department, and be completed and submitted to the department for review within 6 months of the end of the reporting period~~. *The completed report must be submitted to the department for review within 6 months of the end of the reporting period. The department may grant a 3-month extension for the submittal of an audit in lieu of a financial report.*

(ii) An alternative format of a financial report acceptable to the department may be used by local government entities with a population of 10,000 or less as reported in the most recent decennial survey issued by the United States census bureau and that meets the requirements outlined in department rule.

(b) The financial report of a local government that has authorized the use of tax increment financing pursuant to 7-15-4282 must include a report of the financial activities related to the tax increment financing provision.

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

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report that is in excess ~~of $500,000 and that is also in excess~~ of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), regardless of the source of revenue or financial assistance, shall cause an audit to be made ~~at least every 2 years. The audit must cover the entity's preceding 2 fiscal years~~. The audit *may cover the entity's preceding 2 fiscal years and* must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every ~~4~~ *4* years, ~~if directed by the department, or,~~ *if directed by the department, or,* in the case of a school district, if directed by the department at the request of the superintendent of public instruction,

cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

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

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

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

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

Section 2. Section 2-7-517, MCA, is amended to read:

"**2-7-517. Penalties -- rules to establish fine.** (1) Except as provided in 15-1-121(12)(b), when a local government entity has failed to file a report as required by 2-7-503(1) ~~or to make the payment required by 2-7-514(2)~~ *or make payment required by 2-7-514(2)* within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.

~~(3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.~~

~~(4)~~*(3)* The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity's control.

~~(5)~~*(4)* The department shall adopt rules establishing a fine, not to exceed $100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section."

Approved May 3, 2023

CHAPTER NO. 374

[HB 274]

AN ACT REVISING CIVIL AIR PATROL FUNDING LAWS; ELIMINATING GRANT RESTRICTIONS; REVISING A TERMINATION DATE; EXTENDING A STATUTORY APPROPRIATION; AMENDING SECTION 10-3-802, MCA; AMENDING SECTION 5, CHAPTER 477, LAWS OF 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-3-802, MCA, is amended to read:

"**10-3-802. ~~(Temporary)~~ Grants -- civil air patrol -- reporting requirements.** (1) The department of military affairs shall distribute grants to the Montana civil air patrol on an annual basis ~~to provide training to civil air patrol members~~.

(2) The amount of $45,000 is statutorily appropriated on an annual basis, as provided in 17-7-502, from the general fund to the department of military affairs for the purposes outlined in subsection (1).

(3) The department of military affairs shall report to the house appropriations committee at each legislative session and to the state administration and veterans' affairs interim committee in accordance with 5-11-210 on the distribution of grants and the following metrics:

(a) the extent to which counties are informed of the services provided by the civil air patrol;

(b) the extent to which the civil air patrol is used by counties for search and rescue operations; and

(c) the amount of savings realized by counties who have used the civil air patrol for search and rescue operations. ~~(Terminates June 30, 2023--sec. 5. Ch. 477, L. 2019.)~~"

Section 2. Section 5, Chapter 477, Laws of 2019, is amended to read:

"Section 5. Termination. [This act] terminates June 30, ~~2023~~ *2031*."

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

Approved May 3, 2023

CHAPTER NO. 375

[HB 296]

AN ACT REVISING LAWS RELATING TO SALES OF RESIDENTIAL REAL PROPERTY; REQUIRING SELLERS OF RESIDENTIAL REAL PROPERTY TO PROVIDE A WRITTEN DISCLOSURE STATEMENT; PROVIDING REQUIREMENTS FOR THE DISCLOSURE STATEMENT; PROVIDING EXEMPTIONS; PROVIDING FOR A BUYER'S RIGHT TO RESCIND; REVISING DEFINITIONS; AND AMENDING SECTION 37-51-102, MCA.

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

Section 1. Definitions. Unless the context requires otherwise, in [sections 1 through 5] the following definitions apply:

(1) "Adverse material fact" means a condition, malfunction, or problem that would have a materially adverse effect on the monetary value of real property, that affects the structural integrity of any improvements located on the real property, or that presents a documented health risk to occupants of the real property or would impair the health or safety of future occupants of the real property.

(2) "Buyer" means one or more persons who are attempting to acquire an ownership interest in real property.

(3) "Contract" means a real estate purchase contract between a buyer and a seller for the sale, conveyance, or exchange of real property, the option to purchase real property, or a lease with an option to purchase real property.

(4) "Disclosure statement" means the statement described in [section 2(1)].

(5) "Offer to purchase" means an offer to transfer real property made by a buyer pursuant to a written contract.

(6) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other legal entity or any combination of these.

(7) "Residential real property" means real property that is improved by a building or other structure designed or intended for occupancy as a residence and that has one to four dwelling units or an individually owned unit in a structure of any size and includes:

(a) real property that has a combined residential and commercial use;

(b) a manufactured home that has been declared an improvement to real property under 15-1-116; and

(c) a condominium as defined in 70-23-102(7).

(8) "Seller" means one or more persons who are attempting to transfer an ownership interest in real property.

(9) "Transfer" means a sale or conveyance of, exchange of, or option to purchase by written instrument an ownership interest in real property for consideration.

Section 2. Seller disclosure -- statement. (1) In any transfer of residential real property in the state, the seller shall provide a disclosure statement to a buyer disclosing any adverse material facts that concern the residential real property and of which the seller has actual knowledge. The disclosure statement must be provided by the seller prior to or contemporaneously with the execution of a contract, either directly or via the real estate agent or other authorized representative of the seller, and must be provided to the buyer or the real estate agent or other authorized representative of the buyer. The disclosure statement must contain, at a minimum, any of the following information of which the seller has actual knowledge:

(a) matters affecting legal ownership or title to the residential real property or the seller's ability to transfer the residential real property;

(b) matters affecting water service to the residential real property or the water source serving the residential real property;

(c) matters affecting the system for wastewater treatment that serves the residential real property;

(d) information concerning utility connections for the residential real property;

(e) matters affecting the buildings or other structures designed or intended for occupancy as a residence, including water intrusion, and problems or other issues related to any structural system or improvement, including any well, septic system, roof, foundation, plumbing, electrical system, heating system, windows, doors, or appliances;

(f) whether any substantial additions or alterations have been made to the residential real property without a building permit;

(g) whether there are any hazardous materials or pest infestations located on the residential real property or in the immediate area;

(h) whether there are any problems with settling, soil, standing water, or drainage on the residential real property or in the immediate area;

(i) whether any portion of the residential real property has been tested or treated for asbestos, radon gas, lead-based paint, mold, methamphetamine, fuel or chemical storage tanks, or contaminated soil or water; and

(j) any other adverse material fact, including environmental issues, structural system issues, mechanical issues, legal issues, physical issues, or others not listed above of which the seller has actual knowledge concerning the residential real property.

(2) The disclosure statement must also include statements substantially similar to the following:

(a) that the disclosure statement constitutes a statement of the conditions of the residential real property and information concerning the residential real property actually known by the seller;

(b) that the seller or the real estate agent or other authorized representative of the seller is not obligated to investigate the residential real property in preparing the disclosure statement and that unless the buyer is otherwise advised in writing, the seller, other than having lived at or owning the property, possesses no greater knowledge than that which could be obtained by a careful inspection of the property by the buyer;

(c) that unless the buyer and seller have otherwise agreed in writing, any contract is not effective until 3 days after the buyer has received the disclosure statement, and during that delay the prospective buyer may withdraw or rescind any contract to purchase the residential real property without penalty;

(d) that the disclosure statement is not a warranty of any kind by the seller or the real estate agent or other authorized representative of the seller in the transaction involving the transfer of the residential real property; and

(e) that the disclosure statement is not a substitute for any inspections conducted by or for the buyer and that the buyer is encouraged to consult independent inspectors to aid in the buyer's due diligence process prior to the purchase of the residential real property.

Section 3. Exempt transactions. The written disclosure statement set forth in [section 2(1)] is not required for the following transfers of residential real property:

(1) transfers pursuant to a court order, including but not limited to a transfer ordered by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, or a transfer that results from an order for specific performance of a contract or other agreement between persons;

(2) transfers between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to this decree;

(3) transfers to a mortgagee by a mortgagor or successor in interest who is in default, sales to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, any foreclosure sale after default, any foreclosure sale after default in an obligation secured by a mortgage, a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, sales by a mortgagee or a beneficiary under a deed of trust who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the residential real property by a deed in lieu of foreclosure, sales to the legal owner or lienholder of a manufactured home or mobile home by a registered owner or successor in

interest who is in default, or sales by reason of any foreclosure of a security interest in a manufactured home or mobile home;

(4) transfers from one co-owner to one or more other co-owners;

(5) transfers to a person who is a spouse, child by blood or adoption, or parent of the seller or any other owner of the residential real property; and

(6) transfers when in the contract the buyer has waived the right to receive a disclosure statement at the time of submitting the offer to purchase to the seller.

Section 4. Buyer's right to rescind. (1) Unless otherwise agreed to by the buyer and the seller in writing, if a disclosure statement is provided by a seller to a buyer after the execution of a contract, the buyer shall have 3 days from the day the seller or the real estate agent or other authorized representative of the seller delivers the disclosure statement to rescind the contract by delivering a separately signed written statement of rescission to the seller or the real estate agent or other authorized representative of the seller.

(2) The buyer may waive the right to rescind in any offer to purchase.

Section 5. Purpose of disclosure statement. (1) A disclosure statement as provided in [section 2] does not constitute a warranty of any kind by the seller or the real estate agent or other authorized representative of the seller.

(2) The disclosure statement must be considered a disclosure by the seller only and not the real estate agent or other authorized representative of the seller.

(3) The seller may not be responsible for misstatements or errors in a disclosure statement that are based on information a seller obtained from a reliable third-party, including a local governing agency.

Section 6. Section 37-51-102, MCA, is amended to read:

"**37-51-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) (a) "Adverse material fact" ~~means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:~~

~~(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or~~

~~(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.~~ *means a fact that should be recognized by a broker or salesperson as being significant enough to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:*

(i) materially affects the value, affects the structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(2) "Asset management" means management, oversight, or direct actions taken to maintain or transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to a foreclosure sale.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property;

(g) performs asset management services for real property in conjunction with the marketing or transfer of the property; or

(h) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (4).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

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

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" includes:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" means an individual who for a salary, commission, or compensation of any kind or with the intent or expectation of receiving valuable consideration engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others without transfer of the title to the property. The term includes but is not limited to an individual who:

(a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to the property;

(b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the improvements on any real estate located in this state;

(c) engages in the business of promoting the lease, rental, exchange, or other disposition of real estate located in this state without transfer of the title to the property through the listing of the real estate in a publication issued primarily for this purpose;

(d) assists in creating or completing real estate lease contracts;

(e) procures tenants for owners of real estate located in this state;

(f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this state;

(g) makes the advertising of real property for lease available by public display to potential tenants;

(h) shows rental or lease properties to potential tenants;

(i) in conjunction with property management responsibilities, acts as a liaison between the owners of real estate and a tenant or potential tenant;

(j) in conjunction with property management responsibilities, generally oversees the inspection, maintenance, and upkeep of leased real estate belonging to others;

(k) in conjunction with property management responsibilities, collects rents or attempts to collect rents for any real estate located in this state;

(l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property manager for referral of the name of a prospective lessor or lessee of real property;

(m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or

(n) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (17).

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker's license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 70, chapter 1, and the provisions of Title 70, chapter 1, apply to [sections 1 through 5].

Approved May 3, 2023

CHAPTER NO. 376

[HB 303]

AN ACT PROVIDING PROTECTIONS FOR MEDICAL PRACTITIONER, HEALTH CARE INSTITUTION, AND HEALTH CARE PAYER ACTIONS BASED ON CONSCIENCE; PROVIDING PROTECTIONS FOR OBJECTING

TO PARTICIPATING IN HEALTH CARE SERVICES BASED ON CONSCIENCE; PROVIDING FREE SPEECH PROTECTIONS; PROVIDING WHISTLEBLOWER PROTECTIONS; PROVIDING IMMUNITY; LIMITING GOVERNMENTAL LIABILITY; PROVIDING REMEDIES; AMENDING SECTIONS 37-1-308 AND 50-20-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Definitions. As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) (a) "Conscience" means the ethical, moral, or religious beliefs or principles held by a medical practitioner, health care institution, or health care payer.

(b) With respect to institutional or corporate persons, as opposed to individual persons, the term is determined by reference to that entity or body's governing documents, including but not limited to published ethical, moral, or religious guidelines or directives, mission statements, constitutions, articles of incorporation, bylaws, policies, or regulations.

(2) (a) "Discrimination" means an adverse action taken against, or a threat of adverse action communicated to, a medical practitioner, health care institution, or health care payer as a result of the medical practitioner, health care institution, or health care payer's refusal to participate in a health care service on the basis of conscience, including but not limited to termination of employment, transfer from current position, demotion from current position, adverse administrative action, reassignment to a different shift or job title, increased administrative duties, denial of staff privileges, denial of board certification, loss of career specialty, reduction of wages, benefits, or privileges, refusal to award a grant, contract, or other program, refusal to provide residency training opportunities, denial, deprivation, or disqualification of licensure, withholding or disqualifying from financial aid and other assistance, impediment of the creation or improvement of a health care institution or health care payer, impediment of the acquisition or merger of a health care institution or health care payer, the threat of any of the preceding actions, or any other penalty, disciplinary, or retaliatory action, whether executed or threatened.

(b) The term does not include the negotiation or purchase of insurance by a nongovernment entity.

(3) (a) "Health care institution" means a public or private hospital, outpatient center for primary care, medical center, physician organization, professional association, outpatient center for surgical services, private physician's office, pharmacy, long-term care facility, medical school, nursing school, medical training facility, or any other entity or location in which health care services are performed.

(b) The term includes but is not limited to organizations, corporations, partnerships, associations, agencies, networks, sole proprietorships, or joint ventures.

(4) "Health care payer" means an employer, health plan, health maintenance organization, insurance company, management services organization, or another entity that pays for or arranges for payment for a health care service, in whole or in part.

(5) "Health care service" means medical research or medical care provided to a patient at any time during the patient's course of treatment, including but not limited to initial examination, testing, diagnosis, referral, dispensing or administration of a drug, medication, or device, psychological therapy or

counseling, research, prognosis, therapy, record-making procedures, notes related to treatment, set up, or performance of a surgery or procedure, or any other care or service performed or provided by a medical practitioner.

(6) (a) "Medical practitioner" means a person who is or may be asked to participate in a health care service.

(b) The term includes but is not limited to physicians, nurse practitioners, physician assistants, nurses, nurse aides, allied health professionals, medical assistants, hospital employees, employees of an outpatient center for primary care, outpatient center for surgical services, or long-term care facility, pharmacists, pharmacy technicians, pharmacy employees, medical school faculty and students, nursing school faculty and students, psychology and counseling faculty and students, medical researchers, laboratory technicians, counselors, social workers, or any other person who facilitates or participates in a health care service.

(7) "Participate in a health care service" means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing a health care service.

(8) "Person" means one or more individuals, partnerships, associations, or corporations.

Section 2. Right of conscience for health care institutions and health care payers -- immunity -- exceptions. (1) (a) A health care institution or health care payer may not be required to participate in or pay for a health care service that violates the health care institution's or health care payer's conscience, including by permitting the use of its facilities.

(b) An insurance company shall list any health care service that it may refuse to pay for on the basis of conscience in the applicable policy.

(2) Except as provided in subsection (5), refusal to participate in or pay for a health care service under this section may not give rise to liability of the health care institution or health care payer for damages allegedly arising from the refusal or be the basis for any discrimination, discipline, or other recriminatory action against the health care institution, health care payer, or any personnel, agent, or governing board.

(3) Nothing in this section may be construed to relieve a health care institution of the requirement to provide emergency medical treatment to all patients set forth in 42 U.S.C. 1395dd.

(4) This section is supplemental to and may not be construed as modifying or limiting the rights and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

(5) The immunity provisions of this section do not apply to a health care institution or health care payer owned or operated by the state or a political subdivision of the state.

Section 3. Right of conscience for medical practitioners -- affirmative consent for abortion services -- immunity -- exceptions. (1) A medical practitioner has the right not to participate in a health care service that violates the medical practitioner's conscience. A health care institution may not be held liable for the exercise of conscience not to participate in a health care service by a medical practitioner employed, contracted, or granted admitting privileges by the health care institution.

(2) A health care institution may require the exercise of conscience as a basis for not participating in a health care service to be made in writing and signed by the medical practitioner objecting. A writing made under this subsection may refer only generally to the grounds of "conscience".

(3) A medical practitioner's refusal to participate in a health care service based on an exercise of conscience may not be a consideration with respect to staff privileges of a health care institution or a basis for discrimination, discipline, or other recriminatory action against the medical practitioner.

(4) A medical practitioner may not be scheduled for, assigned, or requested to directly or indirectly perform, facilitate, refer for, or participate in an abortion unless the medical practitioner first affirmatively consents in writing as provided in 50-20-111.

(5) Except as provided under Article II, section 18, of the Montana constitution, a medical practitioner may not be held liable for damages allegedly arising from the exercise of conscience not to participate in a health care service.

(6) This section is supplemental to and may not be construed as modifying or limiting the rights and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

Section 4. Exercise of conscience not grounds for loss of privileges, immunities, or public benefits. The exercise of conscience not to participate in a health care service by a medical practitioner, health care institution, or health care payer may not be grounds for loss of any privileges or immunities or for the loss of any public benefits. This section is supplemental to and may not be construed as modifying or limiting the rights and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

Section 5. Whistleblower protections. (1) A medical practitioner or health care institution may not be discriminated against because the medical practitioner or health care institution:

(a) provides, causes to be provided, or intends to provide or cause to be provided information relating to a suspected violation of [sections 1 through 7] to the medical practitioner or health care institution's employer, the attorney general, any agency charged with protecting health care rights of conscience, the United States department of health and human services, the United States office for civil rights, or any other federal agency charged with protecting health care rights of conscience;

(b) testifies or intends to testify in a proceeding concerning a violation of [sections 1 through 7]; or

(c) assists or participates, or intends to assist or participate, in a proceeding.

(2) Except as provided in subsection (3), it is unlawful to discriminate against a medical practitioner because the medical practitioner discloses information that the medical practitioner reasonably believes evinces:

(a) a violation of any law, rule, or regulation;

(b) a violation of any standard of care or ethical guidelines for the provision of any health care service; or

(c) gross mismanagement, a gross waste of funds, an abuse of authority, practices or methods of treatment that may put patient health at risk, or a substantial and specific danger to public health or safety.

(3) Nothing in this section may be construed to exempt a person from the requirements of Title 50, chapter 16, the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., or any other applicable confidentiality and patient privacy requirements.

Section 6. Free speech protections -- notification of complaints -- penalty. (1) The department of public health and human services, a licensing board operating under Title 37, or any other entity that grants licensure or certification may not reprimand, sanction, or revoke or threaten to revoke a license, certificate, or registration of a medical practitioner who is licensed or certified by the department or board for engaging in speech or expressive

activity protected under the first amendment to the U.S. constitution, unless the department or board demonstrates beyond a reasonable doubt that the medical practitioner's speech was the direct cause of physical harm to a person with whom the medical practitioner had a practitioner-patient relationship within the 3 years immediately preceding the incident of physical harm.

(2) (a) Within 14 days of receiving a complaint that may result in revocation of a medical practitioner's license, the department, licensing board, or other licensing or certification entity shall provide the medical practitioner with a copy of the complaint.

(b) If the department, licensing board, or other licensing or certification entity fails to provide the complaint within 14 days of receipt, the department or licensing board shall pay the medical practitioner an administrative penalty of $500 for each week of noncompliance.

Section 7. Unlawful interference. (1) It is unlawful to interfere or attempt to interfere with the right not to participate in a health care service or the whistleblower and free speech rights and protections authorized by [sections 1 through 7], whether by duress, coercion, or any other means.

(2) A medical practitioner, health care institution, or health care payer injured by unlawful interference is entitled to:

(a) injunctive relief, when appropriate, including but not limited to reinstatement of a medical practitioner to the medical practitioner's previous position, reinstatement of board certification, and relicensure of a health care institution or health care payer;

(b) monetary damages for injuries suffered; and

(c) reasonable costs and attorney fees.

(3) This section is supplemental to and may not be construed as modifying or limiting the rights and remedies provided in Title 50, chapter 5, part 5, and 50-20-111.

Section 8. Section 37-1-308, MCA, is amended to read:

"**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) *(a)* If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(b) If the complaint alleges an activity by a licensee whose free speech rights are protected under [section 6], the department or licensing board receiving the complaint must comply with the notification requirements of [section 6].

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated."

Section 9. Section 50-20-111, MCA, is amended to read:

"**50-20-111. Right to refuse participation in abortion -- *affirmative consent required.*** (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

(2) A person may not be scheduled, assigned, or requested to directly or indirectly perform, facilitate, refer for, or participate in an abortion unless the person first affirmatively consents in writing to perform, facilitate, refer for, or participate in the abortion.

~~(2)~~*(3) (a)* All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions.

(b) If requested by any hospital or health care facility or person desiring an abortion, ~~such~~ *a* refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions". The refusal of any person to advise concerning, perform, assist, or participate in abortion shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

~~(3)~~*(4)* It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

~~(4)~~*(5)* Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

~~(5)~~*(6)* As used in this section, the term "person" includes one or more individuals, partnerships, associations, and corporations."

Section 10. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through 7].

Section 11. 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 12. Applicability. [This act] applies to insurance policies issued on or after [the effective date of this act].

Approved May 3, 2023

CHAPTER NO. 377

[HB 309]

AN ACT AMENDING THE VOTING REQUIREMENT OF QUASI-JUDICIAL BOARDS FROM AN ABSOLUTE MAJORITY TO A MAJORITY OF A QUORUM; AND AMENDING SECTION 2-15-124, MCA.

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

Section 1. Section 2-15-124, MCA, is amended to read:

"**2-15-124. Quasi-judicial boards.** If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member must be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members must be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members must be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of the governor's term and the remaining members in the middle of the governor's term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy must be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which the member is appointed.

(5) The governor shall designate the presiding officer. The presiding officer may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid $50 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their leave, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but must receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of ~~all members of a board~~ *the members in attendance at a meeting at which a quorum is present* is required to adopt any resolution, motion, or other decision, unless otherwise provided by law."

Approved May 3, 2023

CHAPTER NO. 378

[HB 367]

AN ACT PROVIDING ADDITIONAL RESTRICTIONS FOR APPROPRIATIONS FOR THE OFFICE OF PUBLIC INSTRUCTION DATABASE MODERNIZATION; ESTABLISHING REPORTING REQUIREMENTS ON PROJECT PROGRESS; AMENDING SECTION 22(2)(E), CHAPTER 401, LAWS OF 2021, AND SECTION 5(2)(G), CHAPTER 551, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 22(2)(e), Chapter 401, Laws of 2021, is amended to read:

"**Section 22. Appropriations to office of public instruction and office of budget and program planning.**

(e) For OPI Database Modernization, funds must be used by the office of public instruction to repair, improve, or replace existing data systems to respond to learning loss associated with the pandemic. *The exemption granted to the office of public instruction in 2-17-516 does not apply to this subsection.* Actions taken must be consistent with 20-7-104 *and must:*

(i) facilitate use of data by school districts, community colleges, and the Montana university system to improve individual student academic outcomes and periodically evaluate student academic performance;

(ii) facilitate secure data sharing between school districts and the office of public instruction;

(iii) facilitate secure sharing of data between state agencies using the platform implemented by the department of administration, including the sharing of data with, but not limited to, the office of public instruction, the Montana university system, the office of the commissioner of higher education, and the department of labor and industry;

(iv) allow and require review and approval of specifications and procurement methods by the department of administration;

(v) allow and require final contract review and approval by the department of administration, including contract amendments and other changes in scope or cost;

(vi) comply with the Montana Procurement Act for the procurement to select a vendor as the stated purpose of that act is to provide for increased public confidence in the procedures followed in public procurement, to ensure the fair and equitable treatment of all persons who deal with the procurement system of the state, and to provide safeguards for the maintenance of a procurement system of quality and integrity;

(vii) ensure that the successful offeror has experience and proven performance in the implementation of a data platform for the secure storage and sharing of information in two or more states that facilitates:

(A) school district use of data to improve individual student academic outcomes and to periodically evaluate student academic performance;

(B) sharing of data between school districts and state education officials; and

(C) sharing of data between state education officials and other state officials, including higher education officials and other state agencies;

(viii) ensure that a successful offeror identifies how the vendor's proposed solution is substantially similar to a project that has been installed in two or more states and the period of time it has been used in those states;

(ix) utilize commercial off-the-shelf information technology resources whenever feasible, rather than the commissioning of custom solutions. The department of administration shall have full oversight authority over all custom-developed code under this subsection (2)(e)(ix). For the purposes of this subsection (2)(e)(ix):

(A) "Commercial off-the-shelf" means commercially available information technology resources that are ready-made, primarily configurable, and have the ability to be adapted aftermarket to meet the needs of the state; and

(B) "Information technology resource" means any hardware, software, and associated services, including state and third-party platforms, networks, systems, or facilities, used to store or transmit information in any form.

(x) include a well-defined maintenance agreement."

Section 2. Section 5(2)(g), Chapter 551, Laws of 2021, is amended to read:

"**Section 5. ~~Appropriations~~ *Appropriation* -- authorization to spend federal money.**

(g) For OPI Database Modernization, funds must be used by the office of public instruction to repair, improve, or replace existing data systems to respond to learning loss associated with the pandemic. *The exemption granted to the office of public instruction in 2-17-516 does not apply to this subsection.* Actions taken must be consistent with the provisions of 20-7-104 *and must:*

(i) facilitate use of data by school districts, community colleges, and the Montana university system to improve individual student academic outcomes and periodically evaluate student academic performance;

(ii) facilitate secure data sharing between school districts and the office of public instruction;

(iii) facilitate secure sharing of data between state agencies using the platform implemented by the department of administration, including the sharing of data with, but not limited to, the office of public instruction, the Montana university system, the office of the commissioner of higher education, and the department of labor and industry;

(iv) allow and require review and approval of specifications and procurement methods by the department of administration;

(v) allow and require final contract review and approval by the department of administration, including contract amendments and other changes in scope or cost;

(vi) comply with the Montana Procurement Act for the procurement to select a vendor as the stated purpose of that act is to provide for increased public confidence in the procedures followed in public procurement, to ensure the fair and equitable treatment of all persons who deal with the procurement system of the state, and to provide safeguards for the maintenance of a procurement system of quality and integrity;

(vii) ensure that the successful offeror has experience and proven performance in the implementation of a data platform for the secure storage and sharing of information in two or more states that facilitates:

(A) school district use of data to improve individual student academic outcomes and to periodically evaluate student academic performance;

(B) sharing of data between school districts and state education officials; and

(C) sharing of data between state education officials and other state officials, including higher education officials and other state agencies;

(viii) ensure that a successful offeror identifies how the vendor's proposed solution is substantially similar to a project that has been installed in two or more states and the period of time it has been used in those states;

(ix) utilize commercial off-the-shelf information technology resources whenever feasible, rather than the commissioning of custom solutions. The department of administration shall have full oversight authority over all custom-developed code under this subsection (2)(g)(ix). For the purposes of this subsection (2)(g)(ix):

(A) "Commercial off-the-shelf" means commercially available information technology resources that are ready-made, primarily configurable, and have the ability to be adapted aftermarket to meet the needs of the state; and

(B) "Information technology resource" means any hardware, software, and associated services, including state and third-party platforms, networks, systems, or facilities, used to store or transmit information in any form.

(x) include a well-defined maintenance agreement."

Section 3. Reporting requirements. (1) Within 30 days of [the effective date of this act], and every month thereafter, the department of administration and the office of public instruction shall provide a written report to the committees listed in subsection (3) on the status of the procurement process for the database modernization project. The report must include information on the potential vendor and the status of the request for proposal process.

(2) After the procurement process is complete and a vendor has been selected, the office of public instruction shall continue to provide written reports to the committees listed in subsection (3) on the status of the following every 2 months:

(a) the incurred and anticipated costs of the project;

(b) the implementation timeline; and

(c) any other information relevant to the project.

(3) The department of administration and the office of public instruction shall provide the reports outlined in subsections (1) and (2) to the following committees:

(a) the legislative finance committee;

(b) the education interim committee;

(c) the general government budget committee provided for in 5-12-501; and

(d) the education budget committee provided for in 5-12-501.

(4) The reports must be delivered in an electronic format.

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

Approved May 3, 2023

CHAPTER NO. 379

[HB 422]

AN ACT DIRECTING AN AMENDMENT TO ARM 27.95.623 TO REVISE THE CHILD-TO-STAFF RATIOS AND MAXIMUM GROUP SIZES FOR CHILD CARE CENTERS AND PROVIDE FOR A HIGHER CHILD-TO-STAFF RATIO DURING NAP TIMES PROVIDED CERTAIN CONDITIONS ARE MET.

WHEREAS, the proposed changes to the child-to-staff ratios and maximum group sizes for child care centers more closely align with the guidelines from the National Association for the Education of Young Children (NAEYC); and

WHEREAS, the proposed changes would benefit the child care industry in Montana by opening up more child care spots in communities across the state while still aligning with the STARS to Quality level 5 standards from the Department of Public Health and Human Services; and

WHEREAS, child care centers would see increased revenue, which would allow the child care providers to increase their employees' wages without increasing tuition rates for families; and

WHEREAS, at least 21 other states have adopted child care regulations that provide flexibilities during children's nap times, including Wyoming, Colorado, Mississippi, Texas, Alaska, and others; and

WHEREAS, the additional flexibilities at nap time would benefit the child care industry in Montana by allowing lead staff to meet, plan, and collaborate during nap time and would reduce payroll costs by eliminating the need to schedule lead staff planning time each week while those staff are not included in the ratio, all while supporting a safe nap environment with sufficient supervision; and

WHEREAS, the proposed changes would allow child care centers to increase access and affordability to child care for Montana families, help child care providers to attract and retain staff, and support quality improvement in child care programs, while still aligning with state and industry standards.

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

Section 1. The department of public health and human services shall amend ARM 37.95.623 to read:

"37.95.623 CHILD CARE CENTERS: CHILD-TO-STAFF RATIOS

(1) The child-to-staff ratio and maximum group size for a child care center are:

(a) 4:1 for children newborn through ~~23~~ *11* months with a maximum group size of ~~12~~ *12;*

(b) 6:1 for children 12 months through 23 months with a maximum group size of 12;

(c) 8:1 for children two years ~~through three years~~ with a maximum group size of 16;

~~(c)~~*(d)* 10:1 for children ~~four years~~ *three years through five years* with a maximum group size of ~~24~~ *20*; and

~~(d)~~*(e)* ~~14:1 for five years and over~~ *20:1 for children six years and over* with a maximum group size of ~~32~~ *40*.

(2) When children of different ages are mixed, the ratio and group size for the youngest child in the group must be maintained.

(3) Only the director, early childhood lead teachers, assistant teachers, trainees, and substitute teachers may be counted as staff when determining the staff ratio.

(4) Group sizes must be maintained except for mealtimes, outdoor play, rest periods, or during large group activities, such as educational assemblies.

(5) At nap time, the child-to-staff ratio may be doubled for children two years and over when the following conditions are met:

(a) at least half the children are sleeping;

(b) another staff member is onsite in the center and is immediately available;

(c) the maximum group size and room capacity are not exceeded; and

(d) the staff member responsible for direct supervision of the napping children is not a trainee."

Approved May 3, 2023

CHAPTER NO. 380

[HB 440]

AN ACT CREATING LIMITS ON THE NUMBER OF RESERVED CAMPSITES IN STATE PARKS, RECREATIONAL AREAS, AND PUBLIC CAMPING GROUNDS UNDER THE JURISDICTION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS.

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

Section 1. Reserved camp sites -- limits. (1) Except as provided in subsection (3), no more than 80% of all available campsites may be reserved in a state park, recreational area, or public camping ground with overnight camping.

(2) This section applies to all state parks, recreational areas, and public camping grounds under the jurisdiction of the department as provided in 23-1-102 or the board as provided in 23-1-106 and 23-1-111, including fishing access sites if the site allows for overnight camping.

(3) This section does not apply to a river system where camping opportunity is limited to designated float-in sites only.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 1].

Approved May 3, 2023

CHAPTER NO. 381

[HB 443]

AN ACT PROHIBITING DISCRIMINATION BASED ON THE FREE EXERCISE OF RELIGION OR THE FREEDOM OF SPEECH AND EXPRESSION IN THE REAL ESTATE INDUSTRY AND OTHER LICENSED PROFESSIONS OR OCCUPATIONS; PROHIBITING THE INVESTIGATION OF A COMPLAINT AGAINST A LICENSED PROFESSIONAL FOR UNPROFESSIONAL CONDUCT BASED ON THE LICENSED PROFESSIONAL'S FREE EXERCISE OF RELIGION OR FREEDOM OF SPEECH AND EXPRESSION; PROVIDING THAT IT IS NOT UNPROFESSIONAL CONDUCT TO ENGAGE IN THE FREE EXERCISE OF RELIGION OR THE FREEDOM OF SPEECH AND EXPRESSION; PROVIDING THAT IT IS UNPROFESSIONAL CONDUCT TO AID OR ABET ANY PERSON OR ORGANIZATION IN TAKING ADVERSE ACTION AGAINST A LICENSED PROFESSIONAL BASED ON THE LICENSED PROFESSIONAL'S FREE EXERCISE OF RELIGION OR FREEDOM OF SPEECH AND EXPRESSION; AND AMENDING SECTIONS 28-10-103, 37-1-308, 37-1-316, 37-1-402, 37-1-410, AND 37-51-321, MCA.

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

Section 1. Section 28-10-103, MCA, is amended to read:

"**28-10-103. Actual versus ostensible agency -- limitation.** (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be the principal's agent when that person is not really employed by the principal.

(2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) (a) Subsection (2) is not applicable unless the health care provider has instituted a policy or practice requiring persons providing independent professional services to have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations. The insurance provided for in this subsection must be in effect for the period of time during which a medical malpractice action must be brought as provided in 27-2-205.

(b) Failure of a health care provider providing independent professional services to comply with a policy or practice implementing subsection (3)(a) constitutes unprofessional conduct pursuant to ~~37-1-316(17)~~ *37-1-316(1)(q)* and 37-2-304."

Section 2. Section 37-1-308, MCA, is amended to read:

"**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. *However, if the written complaint or information that a licensee or license applicant may have violated a requirement of this part is based on the licensee or license applicant's exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution, then the investigation of the licensee or license applicant must cease immediately and the complaint must be dismissed.*

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated."

Section 3. Section 37-1-316, MCA, is amended to read:

"**37-1-316. Unprofessional conduct.** *(1)* The following is unprofessional conduct for a licensee or license applicant governed by this part:

~~(1)~~*(a)* conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or

involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

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

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

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

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

~~(6)~~*(f)* offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(7)~~*(g)* denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

~~(8)~~*(h)* failure to comply with a term, condition, or limitation of a license by final order of a board;

~~(9)~~*(i)* revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

~~(10)~~*(j)* use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

~~(11)~~*(k)* having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(12)~~*(l)* engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

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

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

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

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

~~(a)~~*(i)* peer review committee;

~~(b)~~*(ii)* professional association; or

~~(c)~~*(iii)* local, state, federal, territorial, provincial, or Indian tribal government;

~~(17)~~*(q)* failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

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

~~(19)~~*(s)* the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to Title 16, chapter 12, part 5.

(2) Notwithstanding the provisions of this section or any other provision of this title governing unprofessional conduct of a licensee or a license applicant under this title, it is not unprofessional conduct for a licensee or a license applicant under this title to engage in the exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution."

Section 4. Section 37-1-402, MCA, is amended to read:

"**37-1-402. Unprofessional conduct -- complaint -- investigation -- immunity.** (1) A person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of this part, the department may investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. *However, if the written complaint or information that a licensee or license applicant may have violated a requirement of this part is based on the licensee or license applicant's exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution, then the investigation of the licensee or license applicant must cease immediately and the complaint must be dismissed.*

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint."

Section 5. Section 37-1-410, MCA, is amended to read:

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

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

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

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

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

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

~~(6)~~*(f)* offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

~~(7)~~*(g)* receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied;

~~(8)~~*(h)* failing to comply with a term, condition, or limitation of a license by final order of the department;

~~(9)~~*(i)* having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

~~(10)~~*(j)* misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

~~(11)~~*(k)* interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

~~(12)~~*(l)* assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license;

~~(13)~~*(m)* using alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties; or

~~(14)~~*(n)* exhibiting conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

(2) Notwithstanding the provisions of this section or any other provision of this title governing unprofessional conduct of a licensee or a license applicant under this title, it is not unprofessional conduct for a licensee or a license applicant under this title to engage in the exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution."

Section 6. Section 37-51-321, MCA, is amended to read:

"**37-51-321. Unprofessional conduct -- sanction of license.** (1) The following practices, in addition to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an applicant or a person licensed under this chapter:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate

advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection (1)(a).

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the licensee's possession when the money belongs to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) as a broker or a salesperson, negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) as a salesperson, representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) unless exempted, paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker, a salesperson, or a property manager;

(t) conviction of a felony;

(u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners;

(v) failing to disclose to all customers and clients, including owners and tenants, the licensee's contractual relationship while managing properties for owners; ~~or~~

(w) failing to maintain continuous professional liability insurance coverage that meets the requirements of 37-51-325*; or*

(x) aiding or abetting a person or organization in taking an adverse action against a licensee or a license applicant because of speech or conduct that is not made in the licensee's or license applicant's professional capacity that, had the adverse action been taken by a state actor, the speech or conduct would have been protected under the free exercise clause or the free speech clause of the Montana constitution or the United states constitution.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(3) The license of a broker, salesperson, or property manager who violates this section may be sanctioned as provided in 37-1-312."

Section 7. Coordination instruction. If both House Bill No. 303 and [this act] are passed and approved and if both contain a section that amends 37-1-308, then the sections amending 37-1-308 are void and 37-1-308 must be amended as follows:

"**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) *(a)* If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(b) Except as provided in subsection (2)(c), if the written complaint or information that a licensee or license applicant may have violated a requirement of this part is based on the licensee or license applicant's exercise of rights protected under the free exercise clause or the free speech clause of the Montana constitution or the United States constitution, then the investigation of the licensee or license applicant must cease immediately, and the complaint must be dismissed.

(c) If the complaint alleges an activity by a licensee whose free speech rights are protected under [section 6 of House Bill No. 303], the department or licensing board receiving the complaint must comply with the notification requirements of [section 6 of House Bill No. 303].

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated."

Approved May 3, 2023

CHAPTER NO. 382

[HB 461]

AN ACT REVISING LAWS RELATING TO REPORTING OF CHILD ABUSE AND NEGLECT; REQUIRING AUDIO RECORDING OF REPORTS; REQUIRING CERTAIN INFORMATION TO BE REQUESTED; REQUIRING FALSE REPORTS BE REFERRED TO A COUNTY ATTORNEY; AND AMENDING SECTIONS 41-3-201 AND 45-7-203, MCA.

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

Section 1. Department procedures for reports -- recording -- notifications. (1) A department employee receiving a report of abuse or neglect pursuant to this part shall:

(a) obtain the information and provide the notifications specified in this section; and

(b) make an audio recording when a report is made by phone. The department shall retain the recording in the same manner as provided for safety and risk assessments in 41-3-202.

(2) A department employee receiving a report of abuse or neglect shall request the following information:

(a) the specific facts giving rise to the reasonable suspicion of child abuse or neglect and the source or sources of the information; and

(b) (i) if the person making the report is required under 41-3-201 to report suspected abuse or neglect, the person's name and telephone number and the capacity that makes the person a mandatory reporter under 41-3-201; or

(ii) if the person making the report is not a mandatory reporter under 41-3-201, the person's name and telephone number. If the person is unwilling to provide the information, the person receiving the report shall notify the caller that if the caller suspects the child is at serious risk of imminent harm, to call 9-1-1 so the call will be prioritized as an emergency.

(3) Reports made under this part are confidential as provided in 41-3-205. The privacy of the person making the report must be protected as provided in 41-3-205(3)(d) and (3)(h).

(4) A department employee receiving a report pursuant to 41-3-201 shall:

(a) to the greatest extent possible, attempt to obtain the name and phone number of the person making the report and document any other identifying

information available, including but not limited to the caller's phone number when identified by the phone system; and

(b) if the report is being made by phone, notify the caller that the report is being recorded and the person's identity will be kept confidential.

Section 2. Right of aggrieved party. (1) A person who is alleged to be a perpetrator of abuse or neglect in a report made under this part may file a complaint with the county attorney if the person believes the report was false or made with malicious intent. The county attorney shall investigate the complaint, including obtaining any recordings made of the reports.

(2) If the ombudsman suspects that a report was made with false or malicious intent and may be considered an offense under 45-7-203, the ombudsman shall report the matter to the county attorney having jurisdiction of the matter.

Section 3. Section 41-3-201, MCA, is amended to read:

"**41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the department ~~of public health and human services~~. *The department shall follow the provisions of [section 1] in taking the report.*

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker licensed pursuant to Title 37, child protection specialist, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy, as defined in 15-6-201(2)(b);

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect;

(j) an employee of an entity that contracts with the department to provide direct services to children; and

(k) an employee of the department while in conduct of the employee's duties.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

(4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected. *The department shall follow the provisions of [section 1] when taking the report.*

(5) (a) When a professional or official required to report under subsection (2) makes a report, the department:

(i) may share information with:

(A) that professional or official; or

(B) other individuals with whom the professional or official works in an official capacity if the individuals are part of a team that responds to matters

involving the child or the person about whom the report was made and the professional or official has asked that the information be shared with the individuals; and

(ii) shall share information with the individuals listed in subsections (5)(a)(i)(A) and (5)(a)(i)(B) on specific request. Information shared pursuant to this subsection (5)(a)(ii) may be limited to the outcome of the investigation and any subsequent action that will be taken on behalf of the child who is the subject of the report.

(b) The department may provide information in accordance with 41-3-202(8) and also share information about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child who is the subject of the report.

(c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality of the information as required by 41-3-205.

(6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(7) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 4. Section 45-7-203, MCA, is amended to read:

"**45-7-203. Unsworn falsification to authorities.** (1) A person commits an offense under this section if, with the purpose to mislead a public servant in performing an official function, the person:

(a) makes any written *or verbal* false statement that the person does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements from being misleading;

(c) submits or invites reliance on any writing that the person knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object that the person knows to be false.

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

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, part 2, apply to [sections 1 and 2].

Approved May 3, 2023

CHAPTER NO. 383

[HB 488]

AN ACT REVISING THE RESIDENTIAL TENANTS' SECURITY DEPOSITS ACT; REVISING APPLICATION OF THE ACT; REVISING REQUIREMENTS FOR PROVIDING A CLEANING NOTICE; REVISING REQUIREMENTS FOR PROVIDING A LIST OF DAMAGES; AMENDING SECTIONS 70-25-102, 70-25-201, AND 70-25-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 70-25-102, MCA, is amended to read:

"**70-25-102. Application of chapter.** This chapter applies to all rentals of dwellings *subject to Title 70, chapter 24, or Title 70, chapter 33*~~, including mobile homes but excluding property of public housing authorities~~."

Section 2. Section 70-25-201, MCA, is amended to read:

"**70-25-201. Security deposit -- deductions authorized therefrom.** (1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, late charges, utilities, penalties due under lease provisions, and other money owing to the landlord at the time of deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses, including a reasonable charge for the landlord's labor.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time that the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the additional and type or types of cleaning that need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 24 hours to complete the required cleaning*, unless the rental agreement is already terminated pursuant to 70-24-427 or 70-33-427 and the landlord has a pending claim for actual damages filed in court*. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit, or the landlord may

leave a copy of the notice in a conspicuous location in the rental unit and notify the tenant by e-mail, phone, or text, and notice is considered delivered.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section."

Section 3. Section 70-25-202, MCA, is amended to read:

"**70-25-202. List of damages and refund -- delivery to departing tenant.** (1) ~~Every~~ *Except as provided in subsection (2):*

(a) Each landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, with regard to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of the list must be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery must be accomplished by mailing the list and refund to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

~~(2)~~*(b)* If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days by mailing it to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

~~(3)~~*(c)* It is not a wrongful withholding of security deposit funds if the landlord mails the funds to the last-known address of a tenant who has departed and the tenant does not receive the funds because the tenant has not given the landlord the tenant's new address, but the landlord remains liable to the tenant for the amount due the tenant.

(2) This section does not apply if a rental agreement is terminated pursuant to 70-24-427 or 70-33-427 and the landlord has a pending claim for actual damages filed in court."

Section 4. 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 5. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2023

CHAPTER NO. 384

[HB 513]

AN ACT REQUIRING CONSIDERATION OF THE HARM OF REMOVAL IN CHILD ABUSE AND NEGLECT CASES; REQUIRING EVIDENCE OF THE HARM OF REMOVAL TO BE PRESENTED AND CONSIDERED IN CHILD ABUSE AND NEGLECT PROCEEDINGS; REQUIRING CHILD PROTECTION SPECIALISTS TO RECEIVE TRAINING IN TRAUMA RELATED TO REMOVALS; AMENDING SECTIONS 41-3-128 AND 41-3-427, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 41-3-128, MCA, is amended to read:

"**41-3-128. Certificate requirements -- supervision -- fees.** (1) An applicant for certification as a child protection specialist shall:

(a) successfully complete a course in child protection, as defined by the department by rule, which must include training in:

(i) ethics;

(ii) governing statutory and regulatory framework;

(iii) role of law enforcement;

(iv) crisis intervention techniques;

(v) childhood trauma research*, including research on the trauma a child experiences when removed from the home*;

(vi) evidence-based practices for family preservation and strengthening; and

(vii) the provisions of the Indian Child Welfare Act, 25 U.S.C. 1902, et seq.; and

(b) demonstrate the applicant's ability to perform all essential functions of the certified child protection role by earning a passing score on a competency examination developed pursuant to 41-3-130.

(2) As a prerequisite to the issuance of a certificate, the department shall require the applicant to submit fingerprints for the purpose of fingerprint background checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(3) An applicant who has a history of criminal convictions has the opportunity to demonstrate to the department that the applicant is sufficiently rehabilitated to warrant the public trust. The department may deny the certificate if it determines that the applicant is not sufficiently rehabilitated."

Section 2. Section 41-3-427, MCA, is amended to read:

"**41-3-427. Petition for immediate protection and emergency protective services -- *evidence and consideration of harm of removal* -- order -- service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or neglected or is in danger of being abused or neglected.

(c) The affidavit of the department representative must contain*:*

(i) information, if any, regarding statements made by the parents about the facts of the case*; and*

(ii) specific, written documentation as to why the risk of allowing the child to remain at home substantially outweighs the harm of removing the child, including consideration of:

(A) the emotional trauma the child is likely to experience if separated from the family;

(B) the child's relationships with other members of the household, including siblings;

(C) the child's schooling and social relationships that could be disrupted with a placement out of the neighborhood;

(D) the impact the removal would have on services the child is receiving and on extracurricular activities that benefit the child; and

(E) documentation of reasonable efforts made to keep the family intact.

~~(c)~~*(d)* If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

~~(d)~~*(e)* If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition and affidavit.

~~(e)~~*(f)* The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person having physical or legal custody of the child may have a support person present during any in-person meeting with a child protection specialist concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the child protection specialist.

(2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) the right of the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;

(d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by

the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) When requesting emergency protective services under this section, the department shall provide the court with information on:

(a) whether a kinship placement is available; or

(b) if a family foster home has been identified:

(i) where the foster home is located in relation to the child's home;

(ii) whether the foster placement can accommodate the proposed visitation schedule;

(iii) whether siblings can be placed together;

(iv) the proximity of the foster home to the child's home and school;

(v) whether the child will be able to observe religious or cultural practices important to the child; and

(vi) whether the foster home is able to accommodate any special needs the child may have.

(4) In making a removal determination, the court shall weigh and evaluate, in the factual setting, the harm to the child that will result from removal and determine if allowing the child to remain in the home substantially outweighs the harm of removal. Factors for consideration of the best interests of the child include but are not limited to:

(a) the factors identified in subsections (1)(c)(ii)(A) through (1)(c)(ii)(D); and

(b) whether the department made reasonable efforts, as described in subsection (1)(c)(ii)(E), to keep the family intact.

~~(3)~~*(5) (a)* An order for removal of a child from the home must include a finding that*:*

(i) continued residence of the child with the parent is contrary to the welfare of the child*;*

(ii) an out-of-home placement is in the best interests of the child; ~~or that an out-of-home placement is in the best interests of the child~~ *and*

(iii) the risk of allowing the child to remain in the home substantially outweighs the harm of removal.

(b) The court shall provide written findings to explain why the risk of the child's continued stay in the home outweighs the harm of removing the child.

~~(4)~~*(6)* The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

~~(5)~~*(7)* The petition must be served as provided in 41-3-422."

Section 3. Effective date. [This act] is effective July 1, 2023.

Approved May 3, 2023

CHAPTER NO. 385

[HB 523]

AN ACT REQUIRING TRANSPARENCY OF RECIPIENTS AND AMOUNTS PAID FROM EMERGENCY RENTAL ASSISTANCE PROGRAM FUNDS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Transparency reporting of emergency rental assistance program funds. (1) Each quarter, the department of commerce shall provide a list of recipients that have received funds from the emergency rental assistance program.

(2) The list must identify the amount of funds each recipient has received in the last quarter as well as the total amount of funds the recipient has received from the emergency rental assistance program.

(3) The list must also identify any recipient the department of commerce has taken legal action against to collect ineligible or overpayment of emergency rental assistance funds.

(4) The list must be posted on the state's American Rescue Plan Act of 2021 website at https://arpa.mt.gov in a prominent location and must remain on the website as long as the website exists.

(5) As used in this section, "recipient" means a business, property management company, or landlord.

(6) Any information produced in compliance with this section may not directly or indirectly disclose confidential or personally identifiable information of participants of the emergency rental assistance program. Prior to publishing any information in compliance with this section, the department of commerce must ensure compliance with state and federal data privacy and security laws.

Section 2. Effective date. [This act] is effective July 1, 2023.

Section 3. Termination. [This act] terminates December 31, 2023.

Approved May 3, 2023

CHAPTER NO. 386

[HB 529]

AN ACT REVISING LAWS RELATED TO OFFICIALS COMMISSIONED BY THE GOVERNOR; AMENDING SECTION 2-16-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-16-204, MCA, is amended to read:

"**2-16-204. Gubernatorial commissions.** (1) The governor ~~must~~ *shall* commission:

(a) all officers elected by the people whose commissions are not otherwise provided for;

(b) all officers of the militia;

(c) all ~~officers appointed by the governor or~~ *agency heads appointed* by the governor with consent of the senate;

(d) United States senators.

(2) The commissions of all officers commissioned by the governor must be issued in the name of the state and must be signed by the governor and attested by the secretary of state under the great seal."

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

Approved May 3, 2023

CHAPTER NO. 387

[HB 535]

AN ACT GENERALLY REVISING EDUCATION LAWS; ESTABLISHING A LEGISLATIVE GOAL FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOLS TO SUPPORT INSTRUCTION OF FINANCIAL LITERACY; AND AMENDING SECTION 20-1-102, MCA.

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

Section 1. Section 20-1-102, MCA, is amended to read:

"**20-1-102. Legislative goals for public elementary and secondary schools.** It is the goal of the legislature that Montana's public elementary and secondary school system, in cooperation with parents or guardians, create a learning environment for each student that:

(1) develops a sound foundation for literacy and numeracy during the early years that is built upon and reinforced throughout the educational experience;

(2) furthers the ability to reason critically, creatively, and strategically;

(3) fosters the ability to effectively understand and communicate ideas, knowledge, and thoughts;

(4) develops a sense of personal and civic responsibility;

(5) provides an in-depth understanding of the American political, social, and economic systems and the historical context from which they arose;

(6) provides familiarization with political, social, and economic systems found elsewhere in the world;

(7) develops a strong work ethic, postsecondary readiness, and employment skills; ~~and~~

(8) encourages a healthy lifestyle*; and*

(9) supports instruction of financial literacy, where students obtain the knowledge and skills required to succeed financially."

Approved May 3, 2023

CHAPTER NO. 388

[HB 543]

AN ACT REVISING THE INFORMATION THAT MUST BE INCLUDED ON THE BALLOT FOR A BOND ELECTION AND A MILL LEVY ELECTION; REQUIRING THE BALLOT FOR A BOND ELECTION TO INCLUDE THE ESTIMATED ADDITIONAL PROPERTY TAXES IMPOSED ON A RESIDENCE; REQUIRING THE BALLOT FOR A BOND ELECTION AND A MILL LEVY ELECTION TO INCLUDE A STATEMENT ABOUT RENTAL COSTS; AMENDING SECTIONS 15-10-425 AND 20-9-426, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Bond election -- impact on value. The form of the ballot for a bond election must include:

(1) the statement that "an increase in property taxes may lead to an increase in rental costs"; and

(2) a statement of the impact of the election on homes valued at $100,000, $300,000, and $600,000 in terms of actual dollars in additional property taxes that would be imposed in the first year on residences with those values if the bond were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

Section 2. Section 15-10-425, MCA, is amended to read:

"**15-10-425. Mill levy election.** (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.

(2) An election pursuant to this section must be held in accordance with Title 13, chapter 1, part 4 or 5, or Title 20 for school elections, whichever is appropriate to the taxing entity. The governing body shall pass a resolution, shall amend its self-governing charter, or must receive a petition indicating an intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment, or petition must include:

(a) the specific purpose for which the additional money will be used;

(b) either:

(i) the specific amount of money to be raised and the approximate number of mills to be imposed; or

(ii) the specific number of mills to be imposed and the approximate amount of money to be raised; and

(c) whether the levy is permanent or the durational limit on the levy.

(3) Notice of the election must be prepared by the governing body and given as provided in 13-1-108. The form of the ballot must reflect the content of the resolution or charter amendment and must include*:*

(a) the statement that "an increase in property taxes may lead to an increase in rental costs"; and

(b) a statement of the impact of the election on ~~a home~~ *homes* valued at $100,000*,* ~~and a home valued at $200,000~~ *$300,000, and $600,000* in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in either the amount or the number of mills specified in the resolution or charter amendment.

(5) A governing body, as defined in 7-6-4002, may reduce an approved levy in any fiscal year without losing the authority to impose in a subsequent fiscal year up to the maximum amount or number of mills approved in the election. However, nothing in this subsection authorizes a governing body to impose more than the approved levy in any fiscal year or to extend the duration of the approved levy."

Section 3. Section 20-9-426, MCA, is amended to read:

"**20-9-426. Preparation and form of ballots for bond election.** (1) The school district shall cause ballots to be prepared for all bond elections.

(2) All ballots must be substantially in the following form:

OFFICIAL BALLOT

SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS--YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS--NO".

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged, or impact aid revenue) bonds of this

school district in the amount of..... dollars ($.....), payable semiannually, during a period not more than..... years, for the purpose..... (here state the purpose the same way as in the notice of election)?

If this bond is passed, based on the current taxable value of the school district, the property taxes on a home with an assessed market value for tax purposes of $100,000 would increase by $..... in the first year, of $300,000 would increase by $..... in the first year, and of $600,000 would increase by $..... in the first year. An increase in property taxes may lead to an increase in rental costs.

[ ] BONDS -- YES.

[ ] BONDS -- NO."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 1, part 4, and the provisions of Title 13, chapter 1, part 4, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2023.

Section 6. Applicability. [This act] applies to mill levy elections and bond elections held on or after [the effective date of this act].

Approved May 3, 2023

CHAPTER NO. 389

[HB 575]

AN ACT PROHIBITING AN ABORTION OF AN UNBORN VIABLE CHILD UNLESS NECESSARY TO PRESERVE THE LIFE OF THE MOTHER; CLARIFYING THE DEFINITION OF VIABILITY; AMENDING SECTIONS 50-20-104 AND 50-20-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-20-104, MCA, is amended to read:

"**50-20-104. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(2) "Attempted abortion" or "attempted" means an act or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this chapter.

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

(4) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(5) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to the woman by:

(a) the physician who is to perform the abortion of the following information:

(i) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies, and infertility;

(ii) the probable gestational age of the unborn child at the time the abortion is to be performed; and

(iii) the medical risks of carrying the child to term;

(b) the physician or an agent of the physician:

(i) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(ii) that the father is liable to assist in the support of the child, even in instances in which the father has offered to pay for the abortion; and

(iii) that the woman has the right to review the printed materials described in 50-20-304; and

(c) the physician or the agent that the printed materials described in 50-20-304 have been provided by the department and that the materials describe the unborn child and list agencies that offer alternatives to abortion.

(6) *(a)* "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

(b) A determination of viability must be:

(i) made in writing by the physician or physician assistant performing an abortion and include the review and record of an ultrasound; and

(ii) based on the best available science and survival data, with viability presumed at 24 weeks gestational age and any period of time after that. A calculation of gestational age must take into account a margin of error and, if uncertainty exists regarding viability, there is a presumption of viability."

Section 2. Section 50-20-109, MCA, is amended to read:

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

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

(b) on an unborn child*:*

(i) who is capable of feeling pain, except as provided in 50-20-603*; or*

(ii) who is viable, unless necessary to preserve the life of the mother.

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

(3) Violation of subsection (1) is a felony."

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

Approved May 3, 2023

CHAPTER NO. 390

[HB 583]

AN ACT GENERALLY REVISING LICENSING AND CERTIFICATION LAWS; PROVIDING EDUCATIONAL CERTIFICATION AND ENDORSEMENT RECIPROCITY AND OCCUPATIONAL LICENSING RECIPROCITY FOR MILITARY MEMBERS, MILITARY SPOUSES, AND VETERANS; AMENDING SECTION 37-1-145, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Activated military personnel exemptions. (1) Upon notice and proof of deployment as described in this subsection, the department shall exempt licensees who deployed to federal funded active duty as military personnel for more than 90 consecutive days from:

(a) the payment of any license renewal or late renewal fees; and

(b) any continuing education or certification requirements or audits for a renewal cycle that falls within the period of active duty and within the 6 months following active duty.

(2) If a license in subsection (1) terminates as provided in 37-1-141, the board or program may impose reasonable conditions to demonstrate competency as a condition to reactivate the license upon notice and opportunity for a hearing pursuant to 37-1-309.

Section 2. Certification reciprocity for military members, military spouses, and veterans -- requirements. (1) The superintendent of public instruction shall issue a teacher certificate and endorsement or specialist certificate as provided by Title 20 to a person:

(a) who is certified and endorsed in good standing in another state or a United States territory as a teacher or specialist; and

(b) (i) who is a member of the armed forces of the United States or whose spouse is a member of the armed forces of the United States;

(ii) who is subject to military orders for a change of station to a duty station in this state, who is in the process of a change of station to a duty station in this state, who has been honorably discharged and is relocated to this state, or whose spouse is the subject of a military transfer to this state; or

(iii) who is the spouse of a military member, and the spouse left employment to accompany the military member to this state; or

(iv) who is the dependent of an active-duty member of the United State armed forces who has been transferred to Montana, is scheduled to be transferred to Montana, is domiciled in Montana, or has moved to Montana on a permanent change-of-station basis.

(2) In issuing a certificate and endorsement under subsection (1), the superintendent of public instruction may:

(a) issue the person a certificate and endorsement if the superintendent of public instruction determines the requirements for certification and endorsement in the other state are substantially equivalent to the requirements in this state; or

(b) if the requirements for certification and endorsement are not substantially equivalent, issue the person a temporary teacher certificate and endorsement or specialist certificate to authorize the person as a teacher or specialist while completing any specific requirements by the office of public instruction.

(3) The provisions of subsection (1) do not apply to a person whose teacher certificate or specialist certificate is not in good standing with another state or who is subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

Section 3. Licensing and certification reciprocity for military members, military spouses, and veterans -- requirements. (1) A board or program regulated by the department shall issue a license or certificate as provided by Title 37 to a person:

(a) who is licensed or certified in good standing in another state or a United States territory to practice a profession or occupation regulated by the department;

(b) who is a member of the armed forces of the United States or whose spouse is a member of the armed forces of the United States;

(c) who is subject to military orders for a change of station to a duty station in this state, who is in the process of a change of station to a duty station in this state, who has been honorably discharged and is relocated to this state, or whose spouse is the subject of a military transfer to this state; or

(d) who is the spouse of a military member.

(2) In issuing a license or certificate under subsection (1), the board or program may:

(a) issue the person a license or certificate if the board or program determines the requirements for licensure or certification in the other state are substantially equivalent to the requirements in this state; or

(b) if the requirements for licensure or certification are not substantially equivalent, issue the person a temporary license or certificate to authorize the person to practice a profession or occupation while completing any specific requirements by the board or program.

(3) The provisions of subsection (1) do not apply to a person whose license or certificate is not in good standing with another state or who is subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

Section 4. Section 37-1-145, MCA, is amended to read:

"**37-1-145. Military training or experience to satisfy licensing or certification requirements -- rulemaking.** ~~(1) Each licensing board or the department on behalf of a program shall adopt rules that provide that certification or licensure requirements established by that board or program may be met by relevant military training, service, or education completed by an individual as a member of the armed forces or reserves of the United States, the national guard of a state, or the military reserves.~~

~~(2) (a) An applicant for certification or licensure shall provide to the board or, if applying for licensure by a program, to the department satisfactory evidence, as specified in rule, of receiving military training, service, or education that is equivalent to relevant certification or licensure requirements.~~

~~(b) The department and each licensing~~ *Each* board *and program* shall, upon presentation of satisfactory evidence by an applicant for certification or licensure, accept *relevant* education, training, or service completed ~~by an individual as a member of~~ *in* the armed forces or reserves of the United States~~,~~ *or* the national guard ~~of a state~~, ~~or the~~ military reserves*, or naval militia of a state* toward the qualifications to receive the license or certification."

Section 5. Codification instruction. (1) [Sections 1 and 3] are intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1, apply to [sections 1 and 3].

(2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 4, and the provisions of Title 20, chapter 4, apply to [section 2].

Section 6. Coordination instruction. If both House Bill No. 152 and [this act] are passed and approved and if both contain provisions relating to occupational licensing for military spouses under Title 37, then House Bill No. 152 is void.

Section 7. Effective date. [This act] is effective July 1, 2024.

Approved May 3, 2023

CHAPTER NO. 391

[HB 601]

AN ACT REVISING THE CREDIT AMOUNT FOR THE ANNUAL JOB GROWTH INCENTIVE TAX CREDIT; REVISING DEFINITIONS; AMENDING SECTIONS 15-30-2361 AND 39-11-404, MCA; AMENDING SECTIONS 23 AND 24, CHAPTER 550, LAWS OF 2021; REPEALING SECTION 25, CHAPTER 550, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 15-30-2361, MCA, is amended to read:

"~~**15-30-2361. (Temporary) Grow Montana jobs -- annual job growth incentive tax credit.** (1) Subject to the provisions of 39-11-404, a taxpayer is allowed an annual job growth incentive tax credit against the tax imposed by chapter 31 or this chapter for creating qualifying net employee growth in the state.~~

~~(2) The amount of the credit is equal to the number of qualifying new employees in the credit certificate multiplied by 50% of the taxpayer's total estimated taxes imposed on the taxpayer each year for the Montana source wages paid to qualifying new employees under the Federal Insurance Contributions Act, 26 U.S.C. 3111(a) and (b).~~

~~(3) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to succeeding tax years for a period not to exceed 10 years from the tax year the credit was claimed. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first. Any credit remaining 10 years after the tax year for which the credit is based may not be refunded or credited to the taxpayer.~~

~~(4) The credit may be claimed for up to 7 years, but only in a tax year in which the department of labor and industry approved the credit by issuing the taxpayer with a credit certificate as provided in 39-11-404. If a taxpayer claims the credit but was not approved by the department of labor and industry, the taxpayer's return will be processed without regard to the credit.~~

~~(5) For fiscal year filers, the credit available to claim in the current fiscal year is the credit allowed for the calendar year that ends within the taxpayer's fiscal period.~~

~~(6) The department shall, after consultation with the department of labor and industry, prescribe a form for a taxpayer to claim the tax credit. The form must provide the department with sufficient information for the proper administration of the credit.~~

~~(7) The department shall provide the department of labor and industry with an annual report detailing the tax credit provided to taxpayers for the previous year. The information provided to the department of labor and industry is subject to the provisions of 15-30-2618 and 15-31-511.~~

~~(8) A taxpayer claiming this credit may not claim the apprenticeship tax credit pursuant to sections 15-30-2357, 15-31-173, and 39-6-109 in the same tax year that this credit is claimed. This subsection does not prevent a credit carryover from this credit from being used in a tax year in which the apprenticeship tax credit is claimed.~~

~~(9) Each biennium, the department shall provide to the revenue interim committee information regarding all approvals granted and credit certificates issued, including the credits claimed, the names of the qualifying employers of the credits, and the amount of tax credits claimed. This information is not subject to the confidentiality requirements of 15-30-2618 or 15-31-511.~~

~~(10) For the purposes of this section, the terms "credit certificate", "qualifying employer", "qualifying net employee growth", and "qualifying new employee" have the same meaning as those terms are defined in 39-11-404. (Terminates December 31, 2021, 2022, 2023, and 2024, on occurrence of contingency until December 31, 2025--secs. 24, 25, Ch. 550, L. 2021.)~~

15-30-2361. (Temporary ~~-- effective October 1, 2025~~) Grow Montana jobs -- annual job growth incentive tax credit. (1) Subject to the provisions of 39-11-404, a taxpayer is allowed an annual job growth incentive tax credit

against the tax imposed by chapter 31 or this chapter for creating qualifying net employee growth in the state.

(2) The amount of the credit is equal to ~~the number of qualifying new employees in the credit certificate multiplied by~~ 50% of the taxpayer's total estimated taxes imposed on the taxpayer each year for the Montana source wages paid to qualifying new employees *in the credit certificate* under the Federal Insurance Contributions Act, 26 U.S.C. 3111(a) and (b).

(3) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to succeeding tax years for a period not to exceed 10 years from the tax year the credit was claimed. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first. Any credit remaining 10 years after the tax year for which the credit is based may not be refunded or credited to the taxpayer.

(4) The credit may be claimed for up to 7 years, but only in a tax year in which the department of labor and industry approved the credit by issuing the taxpayer with a credit certificate as provided in 39-11-404. If a taxpayer claims the credit but was not approved by the department of labor and industry, the taxpayer's return will be processed without regard to the credit.

(5) For fiscal year filers, the credit available to claim in the current fiscal year is the credit allowed for the calendar year that ends within the taxpayer's fiscal period.

(6) The department shall, after consultation with the department of labor and industry, prescribe a form for a taxpayer to claim the tax credit. The form must provide the department with sufficient information for the proper administration of the credit.

(7) The department shall provide the department of labor and industry with an annual report detailing the tax credit provided to taxpayers for the previous year. The information provided to the department of labor and industry is subject to the provisions of 15-30-2618 and 15-31-511.

(8) A taxpayer claiming this credit may not claim the apprenticeship tax credit pursuant to sections 15-30-2357, 15-31-173, and 39-6-109 in the same tax year that this credit is claimed. This subsection does not prevent a credit carryover from this credit from being used in a tax year in which the apprenticeship tax credit is claimed.

(9) Each biennium, the department shall provide to the revenue interim committee information regarding all approvals granted and credit certificates issued, including the credits claimed, the names of the qualifying employers of the credits, and the amount of tax credits claimed. This information is not subject to the confidentiality requirements of 15-30-2618 or 15-31-511.

(10) For the purposes of this section, the terms "credit certificate", "qualifying employer", "qualifying net employee growth", and "qualifying new employee" have the same meaning as those terms are defined in 39-11-404. (Terminates December 31, 2028--sec. 24(1), Ch. 550, L. 2021.)"

Section 2. Section 39-11-404, MCA, is amended to read:

"~~**39-11-404. (Temporary) Employer job growth incentive tax credit -- administration.** (1) An employer that hires qualifying new employees is eligible for an annual job growth incentive tax credit against income taxes imposed pursuant to Title 15, chapter 30 or 31.~~

~~(2) The amount and duration of the credit is administered by the department of revenue as provided in 15-30-2361 and 15-31-175.~~

(3) A qualifying employer seeking approval to claim a credit shall apply for a credit certificate with the department for the preceding calendar year. The application must be submitted on a form prescribed by the department on which the employer:

(a) identifies and describes the number of qualifying new employees hired;

(b) provides necessary details to calculate the net employee growth and qualifying net employee growth;

(c) provides documentation necessary to calculate the job growth incentive tax credit, including but not limited to the average yearly wage of each qualifying new employee; and

(d) submits any other information the department considers necessary for auditing purposes and to determine whether the employer qualifies for a credit certificate.

(4) After receiving an application, the department shall:

(a) provide the employer with a credit certificate, which must accompany the employer's tax return that is filed with the department of revenue; or

(b) deny an application for a credit certificate and provide the employer with the reasoning for the denial. Prior to issuing a denial, the department shall provide the employer with an opportunity to resolve deficiencies in the application.

(5) The department shall provide to the department of revenue a list of the qualifying employers approved for a credit certificate, the qualifying new employees employed by the qualifying employer, and the aggregate total of net employee growth and qualified net employee growth for qualified employers claiming the credit. The list must include the federal tax identification number of the qualifying employer and the name and social security number or federal tax identification number of the qualifying new employees that were utilized during the issuance of a credit certificate.

(6) The identity and social security number or federal tax identification number of individuals employed by the employer are subject to the provisions of 15-30-2618 and 15-31-511.

(7) The department may audit an employer applying for a credit certificate or who has obtained a credit certificate.

(8) By November 1 of each year, the department shall multiply the minimum yearly wage in subsection (10)(j)(i)(C) by the inflation factor for the following tax year and round the product to the nearest $10. The resulting minimum yearly wage is effective for that following tax year and must be used in calculating the minimum yearly wage.

(9) The department may adopt rules necessary to administer this section.

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

(a) "Business transfer" means any change in ownership or transfer of all or a material portion of the business to another entity or individual by entity merger, combination, reorganization, asset acquisition, transfer, or other similar business transaction in which an existing business is continued under new ownership or a different entity.

(b) "Credit certificate" means a statement issued by the department to a qualifying employer that provides the number of qualifying new employees hired or retained by the qualifying employer starting with calendar year 2022 and ending in calendar year 2028.

(c) "Department" means the department of labor and industry provided for in 2-15-1701.

(d) "Employer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by Title 15, chapters 30 and 31.

~~(e) "Inflation factor" means a number determined for each tax year by dividing the consumer price index as defined in 15-30-2101 for June of the previous tax year by the consumer price index for June 2021.~~

~~(f) "Net employee growth" means the difference between the total number of qualifying new employees employed by the employer in the state during any calendar year starting with calendar year 2022 and ending in calendar year 2028 and the total number of full-time equivalent employees that were employed by the employer or predecessor in the state during calendar year 2021.~~

~~(g) "Predecessor" means any entity or individual that operated a business prior to a business transfer to the employer.~~

~~(h) "Qualifying employer" means an employer with qualifying net employee growth.~~

~~(i) (i) "Qualifying net employee growth" means:~~

~~(A) unless subsection (10)(i)(i)(B) applies, net employee growth equal to at least 10 qualifying new employees during the first year the credit is claimed and at least 15 total qualifying new employees during any subsequent calendar year;~~

~~(B) for a county with a population of 20,000 or less, net employee growth equal to at least 5 qualifying new employees during the first year the credit is claimed and at least 7 total qualifying new employees during any subsequent calendar year.~~

~~(ii) In order to qualify, the net employee growth must be associated with a project in the state that encourages, promotes, and stimulates economic development in the sectors of construction, natural resources, mining, agriculture, forestry, manufacturing, transportation, utilities, or outdoor recreation.~~

~~(j) (i) "Qualifying new employee" means an employee of a qualifying employer:~~

~~(A) who is hired in any calendar year starting with calendar year 2022 and ending in calendar year 2028;~~

~~(B) who is employed for at least 6 months during the year for which the credit is granted; and~~

~~(C) with a yearly wage of at least $50,000, plus any benefits paid to other employees of the employer.~~

~~(ii) The term does not include an employee:~~

~~(A) previously employed by the employer or a predecessor in the preceding 12 months; or~~

~~(B) hired to replace an employee of a predecessor. (Terminates December 31, 2021, 2022, 2023, and 2024, on occurrence of contingency until December 31, 2025--secs. 24, 25, Ch. 550, L. 2021.)~~

39-11-404. ~~(Temporary -- effective October 1, 2025)~~ Employer job growth incentive tax credit -- administration. (1) An employer that hires qualifying new employees is eligible for an annual job growth incentive tax credit against income taxes imposed pursuant to Title 15, chapter 30 or 31.

(2) The amount and duration of the credit is administered by the department of revenue as provided in 15-30-2361 and 15-31-175.

(3) A qualifying employer seeking approval to claim a credit shall apply for a credit certificate with the department for the preceding calendar year. The application must be submitted on a form prescribed by the department on which the employer:

(a) identifies and describes the number of qualifying new employees hired;

(b) provides necessary details to calculate the net employee growth and qualifying net employee growth;

(c) provides documentation necessary to calculate the job growth incentive tax credit, including but not limited to the average yearly wage of each qualifying new employee; and

(d) submits any other information the department considers necessary for auditing purposes and to determine whether the employer qualifies for a credit certificate.

(4) After receiving an application, the department shall:

(a) provide the employer with a credit certificate, which must accompany the employer's tax return that is filed with the department of revenue; or

(b) deny an application for a credit certificate and provide the employer with the reasoning for the denial. Prior to issuing a denial, the department shall provide the employer with an opportunity to resolve deficiencies in the application.

(5) The department shall provide to the department of revenue a list of the qualifying employers approved for a credit certificate, the qualifying new employees employed by the qualifying employer, and the aggregate total of net employee growth and qualified net employee growth for qualified employers claiming the credit. The list must include the federal tax identification number of the qualifying employer and the name and social security number or federal tax identification number of the qualifying new employees that were utilized during the issuance of a credit certificate.

(6) The identity and social security number or federal tax identification number of individuals employed by the employer are subject to the provisions of 15-30-2618 and 15-31-511.

(7) The department may audit an employer applying for a credit certificate or who has obtained a credit certificate.

(8) By November 1 of each year, the department shall multiply the minimum yearly wage in subsection (10)(j)(i)(C) by the inflation factor for the following tax year and round the product to the nearest $10. The resulting minimum yearly wage is effective for that following tax year and must be used in calculating the minimum yearly wage.

(9) The department may adopt rules necessary to administer this section.

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

(a) "Business transfer" means any change in ownership or transfer of all or a material portion of the business to another entity or individual by entity merger, combination, reorganization, asset acquisition, transfer, or other similar business transaction in which an existing business is continued under new ownership or a different entity.

(b) "Credit certificate" means a statement issued by the department to a qualifying employer that provides the number of qualifying new employees hired or retained by the qualifying employer starting with calendar year 2022 and ending in calendar year 2028.

(c) "Department" means the department of labor and industry provided for in 2-15-1701.

(d) "Employer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by Title 15, chapters 30 and 31.

(e) "Inflation factor" means a number determined for each tax year by dividing the consumer price index as defined in 15-30-2101 for June of the previous tax year by the consumer price index for June 2021.

(f) "Net employee growth" means ~~the difference between~~ the total number of qualifying new employees employed by the employer in the state during any calendar year starting with calendar year 2022 and ending in calendar year 2028 ~~and the total number of full-time equivalent employees that were~~

~~employed by the employer or predecessor in the state during calendar year 2021~~.

(g) "Predecessor" means any entity or individual that operated a business prior to a business transfer to the employer.

(h) "Qualifying employer" means an employer with qualifying net employee growth.

(i) (i) "Qualifying net employee growth" means:

(A) unless subsection (10)(i)(i)(B) applies, net employee growth equal to at least 10 qualifying new employees during the first year the credit is claimed and at least 15 total qualifying new employees during any subsequent calendar year;

(B) for a county with a population of 20,000 or less, net employee growth equal to at least 5 qualifying new employees during the first year the credit is claimed and at least 7 total qualifying new employees during any subsequent calendar year.

(ii) In order to qualify, the net employee growth must be associated with a project in the state that encourages, promotes, and stimulates economic development in the sectors of construction, natural resources, mining, agriculture, forestry, manufacturing, transportation, utilities, or outdoor recreation.

(j) (i) "Qualifying new employee" means an employee of a qualifying employer:

(A) who is hired in any calendar year starting with calendar year 2022 and ending in calendar year 2028;

(B) who is employed for at least 6 months during the year for which the credit is granted; ~~and~~

(C) with a yearly wage of at least $50,000, plus any benefits paid to other employees of the employer*; and*

(D) who increases the number of total employees that are employed by the employer from the number of employees employed by the employer in calendar year 2021.

(ii) The term does not include an employee:

(A) previously employed by the employer or a predecessor in the preceding 12 months; or

(B) hired to replace an employee of a predecessor. (Terminates December 31, 2028--sec. 24(1), Ch. 550, L. 2021.)"

Section 3. Section 23, Chapter 550, Laws of 2021, is amended to read:

"Section 23. Effective dates -- applicability. (1) Except as provided in subsections (2) through ~~(6)~~ *(4)*, [this act] is effective July 1, 2021.

(2) [Sections 1 through 3] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 4 through 6] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

~~(4) [Sections 7 through 9] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.~~

~~(5) [Sections 10 through 12] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.~~

~~(6)~~*(4)* [Sections 13 through 15] are effective ~~October 1, 2025~~ *[on passage and approval of this act]* and apply to income tax years beginning after December 31, ~~2025~~ *2021*."

Section 4. Section 24, Chapter 550, Laws of 2021, is amended to read:

"**Section 24. Termination.** (1) Except as provided in ~~subsections~~ *subsection* (2) ~~through (6)~~, [this act] terminates December 31, 2028.

(2) [Sections 1 through 3] terminate December 31, 2022.

(3) [~~Section 4 through~~ *Section* 6] ~~terminate~~ *terminates* ~~December 31, 2023~~ *[on passage and approval of this act]*.

~~(4) [Sections 7 through 9] terminate December 31, 2024.~~

~~(5) [Sections 10 through 12] terminate December 31, 2025.~~

~~(6) [Section 25] terminates January 1, 2025.~~"

Section 5. Repealer. Section 25, Chapter 550, Laws of 2021, is repealed.

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

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2021.

Approved May 3, 2023

CHAPTER NO. 392

[HB 625]

AN ACT ADOPTING THE INFANT SAFETY AND CARE ACT; PROVIDING FINDINGS; PROVIDING DEFINITIONS; PROVIDING INFANT PROTECTIONS; PROVIDING PENALTIES AND PROFESSIONAL SANCTIONS; PROVIDING FOR MANDATORY REPORTING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 8] may be cited as the "Infant Safety and Care Act".

Section 2. Legislative findings. The legislature finds, with respect to [sections 1 through 8], that:

(1) there is a compelling interest in protecting the life of an infant born alive following an attempted abortion;

(2) an infant born alive following an attempted abortion is a legal person for all purposes under the laws of this state and is entitled to all protections under these laws; and

(3) an infant born alive following an attempted abortion in an abortion clinic, medical facility, or other facility is entitled to the same protections under the law that would arise for any newborn infant or for any person who comes to a medical facility or other facility for screening or treatment or otherwise becomes a patient in the facility's care.

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

(1) "Abortion clinic" means a health care provider that performs any abortion procedure or provides an abortion-inducing drug.

(2) (a) "Abortion-inducing drug" means a medicine, drug, or any other substance provided, prescribed, or dispensed with the intent to terminate the clinically diagnosable pregnancy of a woman with the knowledge that the termination will with reasonable likelihood cause the death of the unborn child.

(b) The term includes the off-label use of drugs known to have abortion-inducing properties that are prescribed specifically with the intent of causing an abortion.

(c) The term does not include a drug that may be known to cause an abortion that is prescribed for other medical indications.

(3) "Born alive" means the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after expulsion or extraction, breathes, has a beating heart, or has definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut and

regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, induced abortion, or another method.

(4) "Health care provider" means an individual who may be asked to participate in any way in a health care service or procedure, including but not limited to a physician, physician's assistant, nurse, certified nursing assistant, medical assistant, hospital employee, medical facility employee, or abortion clinic employee.

(5) "Knowingly" has the meaning provided in 45-2-101.

(6) "Medical facility" means a public or private hospital, clinic, center, medical school, medical training institute, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location where medical care or treatment is provided to an individual.

(7) "Purposely" has the meaning provided in 45-2-101.

Section 4. Infant safety and protection. (1) A health care provider present at the time an infant is born alive following an abortion or an attempted abortion shall:

(a) exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care provider would render to any other infant born alive at the same gestational age; and

(b) following the exercise of skill, care, and diligence required under subsection (1)(a), ensure the infant born alive is immediately transported and admitted to a medical facility.

(2) The requirements of this section may not be construed to prevent an infant's parents or guardian from refusing to give consent to medical treatment or surgical care that is not medically necessary or reasonable, including care or treatment that:

(a) is not necessary to save the life of the infant;

(b) has a potential risk to the infant's life or health that outweighs the potential benefit to the infant from the treatment or care; or

(c) will do no more than temporarily prolong the act of dying when death is imminent.

Section 5. Criminal penalties -- professional sanctions -- civil liability. (1) A health care provider who purposely or knowingly violates [section 4] commits a felony offense and, on conviction, shall be subject to a fine not to exceed $1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(2) A licensed health care provider who purposely or knowingly violates the prohibition in [section 4] commits an act of unprofessional conduct, and the individual's license to practice medicine in this state must be suspended for a minimum of 1 year pursuant to Title 37.

(3) In addition to all other remedies available under the laws of this state, failure to comply with the requirements of [sections 1 through 8] provides a basis for:

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

(b) a civil fine of not less than $5,000 for each violation imposed by the department of justice.

Section 6. Mandatory reporting. A health care provider, medical facility, abortion clinic, or employee or volunteer of a medical facility or abortion clinic with knowledge of a violation of [sections 1 through 8] shall immediately report the violation to the department of justice.

Section 7. Right of intervention. The legislature, by joint resolution, may appoint one or more of its members to intervene as a matter of right in

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

Section 8. Construction. [Sections 1 through 8] do not prohibit the application of the laws of this state protecting children to infants born alive during an attempted abortion.

Section 9. Codification instruction. [Sections 1 through 8] are intended to be codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 8].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2023

CHAPTER NO. 393

[HB 691]

AN ACT GENERALLY REVISING LABOR LAWS; REVISING LAWS RELATED TO THE DUTIES OF THE DEPARTMENT; REVISING EXCLUSIONS FROM EMPLOYMENT RELATING TO CASUAL EMPLOYMENT; AND AMENDING SECTIONS 39-1-102 AND 39-51-204, MCA.

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

Section 1. Section 39-1-102, MCA, is amended to read:

"**39-1-102. Duties of department.** *(1)* The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor that regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws. The department shall investigate and enforce the laws prohibiting discrimination contained in Title 49, chapters 2 and 3, and provide a means for conciliation between parties.

(2) In carrying out its duties, the department may not use any undue influence against any person. The department shall:

(a) follow all rules and regulations in its communication with any person; and

(b) inform all persons of their rights, including the right to file a formal complaint with the department."

Section 2. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is ~~$50~~ *$300* or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(h) service performed as a direct seller as defined by 26 U.S.C. 3508;

(i) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(j) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(k) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(l) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(m) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(n) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(n) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(o) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(p) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(q) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(r) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(s) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; ~~or~~or

(t) service performed by a volunteer participant in a program funded under the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq., or the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4950, et seq.

(2) For the purposes of 39-51-203(5) and (6), the term "employment" does not include:

(a) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(b) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(c) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(d) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(e) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(f) service performed by elected public officials; or

(g) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than $1,000 in a calendar year.

(3) (a) Except as provided in subsection (3)(b), an individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(b) An officer or a manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) and who obtains an independent contractor exemption pursuant to 39-71-417(1)(a)(ii) is not considered an independent contractor for the purposes of this chapter.

(4) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Approved May 3, 2023

CHAPTER NO. 394

[HB 702]

AN ACT REPEALING THE TERMINATION DATE RELATED TO REIMBURSEMENT OF WORKERS' COMPENSATION PREMIUMS FOR CERTAIN WORK-BASED LEARNING OPPORTUNITIES; REPEALING SECTION 7, CHAPTER 400, LAWS OF 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 7, Chapter 400, Laws of 2019, is repealed.

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

Approved May 3, 2023

CHAPTER NO. 395

[HB 712]

AN ACT REVISING ELECTION LAWS TO PROHIBIT VOTING BY ILLEGAL ALIENS IN MONTANA; AMENDING SECTION 13-2-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-2-206, MCA, is amended to read:

"**13-2-206. Citizenship requirements.** *(1)* A person may not be permitted to register until the person attains United States citizenship.

(2) Illegal aliens are prohibited from voting in the state of Montana."

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

Approved May 3, 2023

CHAPTER NO. 396

[HB 724]

AN ACT GENERALLY REVISING PUBLIC NOTICE REQUIREMENTS; ALLOWING AGENCIES TO PUBLISH MEETING AGENDAS ON THE AGENCY WEBSITE OR SOCIAL MEDIA PAGE IF THEY HAVE ONE; REQUIRING LOCAL GOVERNMENTS AND SCHOOL BOARDS TO PUBLISH MEETING AGENDAS PRIOR TO THE MEETING; AND AMENDING SECTIONS 2-3-103, 7-1-2121, 7-1-4127, 7-3-304, 7-3-503, 7-3-606, 20-3-322, 20-9-204, AND 20-20-105, MCA.

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

Section 1. Section 2-3-103, MCA, is amended to read:

"**2-3-103. Public participation -- governor to ensure guidelines adopted -- *procedures for publishing notice.*** (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(b) The agency shall publish an agenda for a meeting, as defined in 2-3-202, as follows:

(i) if a newspaper of general circulation in the county where the agency is located publishes electronic notices and links to meeting agendas free of charge

to the agency on the newspaper's website, the agency shall provide the notice and agenda to the newspaper to post on the newspaper's website;

(ii) if the agency does not have an option to post notices and links to meeting agendas free of charge, the agency shall provide adequate notice of a meeting by doing at least one of the following:

(A) posting a link to the meeting agenda on the agency's primary website; or

(B) posting the agenda on the social media site of the agency.

(c) The agenda ~~for a meeting, as defined in 2-3-202,~~ must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter.

(d) Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

~~(b)~~*(e)* For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request."

Section 2. Section 7-1-2121, MCA, is amended to read:

"**7-1-2121. Publication and content of notice -- proof of publication.** (1) Unless otherwise specifically provided by law and except as provided in 13-1-108, whenever a local government unit other than a municipality is required to give notice by publication, this section applies.

(2) A local government unit shall comply with the notice requirements of 2-3-103, including publication of an agenda prior to a meeting.

~~(2)~~*(3)* Publication must be in a newspaper meeting the qualifications of subsections ~~(3) and~~ (4) *and (5)*, except that in a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

~~(3)~~*(4)* (a) The newspaper must:

(i) be of general circulation;

(ii) be published at least once a week;

(iii) be published in the county where the hearing or other action will take place; and

(iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:

(A) circulation for the prior 12 months;

(B) a statement of net distribution;

(C) itemization of the circulation that is paid and that is free; and

(D) the method of distribution.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

~~(4)~~*(5)* In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

~~(5)~~*(6)* If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

~~(6)~~*(7)* The notice must be published twice, with at least 6 days separating each publication.

~~(7)~~*(8)* The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

~~(8)~~*(9)* A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

~~(9)~~*(10)* Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

~~(10)~~*(11)* If the newspaper fails to publish a second notice, the local government unit must be considered to have met the requirements of this section as long as the local government unit submitted the required information prior to the submission deadline and the notice was posted in three public places in the county that were designated by resolution and, if the county has an active website, was posted on the county's website at least 6 days prior to the hearing or other action for which notice was required."

Section 3. Section 7-1-4127, MCA, is amended to read:

"**7-1-4127. Publication of notice -- content -- proof.** (1) *A municipality shall comply with the notice requirements of 2-3-103, including publication of an agenda prior to a meeting.*

(2) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less or in which a newspaper is not published, publication may be made by posting in three public places in the municipality that have been designated by ordinance.

~~(2)~~*(3)* The newspaper must:

(a) be of general circulation;

(b) be published at least once a week;

(c) be published in the county where the municipality is located; and

(d) have, prior to July 1 of each year, submitted to the city clerk a sworn statement that includes:

(i) circulation for the prior 12 months;

(ii) a statement of net distribution;

(iii) itemization of paid circulation and circulation that is free; and

(iv) the method of distribution.

~~(3)~~*(4)* A newspaper of general circulation does not include a newsletter or other document produced or published by the municipality.

~~(4)~~*(5)* In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

~~(5)~~*(6)* In a county where a newspaper does not meet the qualifications in subsection ~~(2)~~ *(3)*, publication must be made in a qualified newspaper in an adjacent county.

~~(6)~~*(7)* If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

~~(7)~~*(8)* The notice must be published twice, with at least 6 days separating each publication.

~~(8)~~*(9)* The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

~~(9)~~*(10)* A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

~~(10)~~*(11)* Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

~~(11)~~*(12)* If the newspaper fails to publish a second notice, the municipality must be considered to have met the requirements of this section as long as the municipality submitted the required information prior to the submission deadline and the notice was posted in three public places in the municipality that were designated by ordinance and, if the municipality has an active website, was posted on the municipality's website at least 6 days prior to the hearing or other action for which notice was required."

Section 4. Section 7-3-304, MCA, is amended to read:

"**7-3-304. Duties of manager.** The manager shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform the duties required by law, ordinance, or resolution;

(3) administer the affairs of the local government;

(4) direct, supervise, and administer all departments, agencies, and offices of the local government unit except as otherwise provided by law or ordinance;

(5) carry out policies established by the commission;

(6) prepare *and publish* the commission agenda *pursuant to 2-3-103*;

(7) recommend measures to the commission;

(8) report to the commission on the affairs and financial condition of the local government;

(9) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(10) report to the commission as the commission may require;

(11) attend commission meetings and may take part in the discussion but may not vote;

(12) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(13) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance;

(14) appoint members of temporary advisory committees established by the manager."

Section 5. Section 7-3-503, MCA, is amended to read:

"**7-3-503. Role and duties of presiding officer.** The commission presiding officer:

(1) must be recognized as the head of the local government unit, must have the power to vote as other members of the commission, and must be the chief executive officer of the local government;

(2) shall enforce laws, ordinances, and resolutions;

(3) shall perform duties required by law, ordinance, or resolution;

(4) shall administer the affairs of the local government;

(5) shall direct, supervise, and administer all departments, agencies, and offices of the local government except as otherwise provided by law or ordinance;

(6) shall carry out policies established by the commission;

(7) shall prepare *and publish* the commission agenda *pursuant to 2-3-103*;

(8) shall recommend measures to the commission;

(9) shall report to the commission on the affairs and financial condition of the local government;

(10) shall execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(11) shall report to the commission as the commission may require;

(12) shall attend commission meetings and may take part in discussions;

(13) shall execute the budget adopted by the commission;

(14) shall appoint, with the consent of the commission, all members of boards and committees. However, the presiding officer may appoint without the consent of the commission temporary advisory committees.

(15) shall appoint, with the consent of a majority of the commission, all department heads, and the presiding officer may remove department heads and may appoint and remove all other employees;

(16) shall prepare the budget and present it to the commission for adoption; and

(17) shall exercise control and supervision over the administration of departments and boards."

Section 6. Section 7-3-606, MCA, is amended to read:

"**7-3-606. Selection, role, and duties of town presiding officer.** (1) The town meeting shall elect a town presiding officer for a term of not less than 1 year or more than 2 years. An unexpired term of a town presiding officer must be filled at the next annual or special town meeting.

(2) The town presiding officer is the chief executive officer of the town and shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required by law, ordinance, or resolution;

(c) administer the affairs of the town;

(d) prepare *and publish* the town meeting agenda *pursuant to 2-3-103*;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards; and

(l) carry out policies established by the town meeting.

(3) Compensation of the town presiding officer must be established by ordinance but may not be reduced during the current term of the town presiding officer."

Section 7. Section 20-3-322, MCA, is amended to read:

"**20-3-322. Meetings and quorum.** (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a final budget meeting, as prescribed by 20-9-131; and

(c) (i) in first-class elementary districts, not less than one regular meeting each month; or

(ii) in any other district, regular meetings at least quarterly.

(2) The trustees shall provide advance notice for the meeting in compliance with 2-3-103 and shall provide an agenda to the public in advance of the meeting.

~~(2)~~*(3)* (a) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c)(i) or (1)(c)(ii) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency or as provided in subsection ~~(2)(b)~~ *(3)(b)*, meetings must be conducted in school buildings or, upon the unanimous vote of the trustees, in a publicly accessible building located within the district.

(b) This section does not prohibit the trustees from meeting outside the boundaries of the school district for collaboration or cooperation on educational issues with other school boards, educational agencies, or cooperatives. ~~Adequate notice of the meeting as well as an agenda must be provided to the public in advance.~~ Decisionmaking may occur only at a properly noticed meeting held within the school district's boundaries.

~~(3)~~*(4)* Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency or to consider a violation of the student code of conduct, as defined in accordance with district policy, within a week of graduation.

~~(4)~~*(5)* Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

~~(5)~~*(6)* For the purposes of this section, "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district."

Section 8. Section 20-9-204, MCA, is amended to read:

"**20-9-204. Conflicts of interests, letting contracts, and calling for bids -- exceptions.** (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.

(2) For the purposes of subsection (1):

(a) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member

and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered; and

(b) "pecuniary interest" does not include holding an interest of 10% or less in a corporation.

(3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322~~(5)~~*(6)*, or as provided in subsections (4) and (6) of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds $80,000.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement for bids under this subsection (3)(b) must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an attorney;

(iv) a consulting actuary;

(v) a private investigator licensed by any jurisdiction;

(vi) a claims adjuster;

(vii) an accountant licensed under Title 37, chapter 50; or

(viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. A district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of subsection (3) if the cooperative purchasing group has a publicly available master list of items available with pricing included and provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list.

(5) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(6) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract."

Section 9. Section 20-20-105, MCA, is amended to read:

"**20-20-105. Regular school election day and special school elections -- limitation -- exception.** (1) Except as provided in subsection

(5), the first Tuesday after the first Monday in May of each year is the regular school election day.

(2) Except as provided in subsections (4) and (5), a proposition requesting additional funding under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.

(3) Subject to the provisions of subsection (2), other school elections may be conducted at times determined by the trustees.

(4) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection (2), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, "unforeseen emergency" has the meaning provided in 20-3-322~~(5)~~*(6)*.

(5) In years when the legislature meets in regular session or in a special session that affects school funding, the trustees may order an election on a date other than the regular school election day in order for the electors to consider a proposition requesting additional funding under 20-9-353."

Approved May 3, 2023

CHAPTER NO. 397

[HB 750]

AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO ISSUE REPLACEMENT CERTIFICATES OF TITLE TO OWNERS OF VEHICLES THAT WERE REMOVED FROM THE DEPARTMENT'S RECORDS BECAUSE OF THE DEPARTMENT'S DATA RETENTION PROCEDURES; ALLOWING OWNERS OF VEHICLES THAT WERE REMOVED FROM THE DEPARTMENT'S RECORDS TO REQUEST THE RETURN OF THE ORIGINAL TITLE; AND AMENDING SECTION 61-3-220, MCA.

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

Section 1. Replacement certificate of title -- data removed by department -- application requirements. (1) Vehicles removed from the department's records because of the department's data retention procedures may be reentered into the system at the request of the last owner of record. The department may issue a certificate of title if the applicant complies with the requirements of subsection (2).

(2) The applicant shall submit an affidavit in a form prescribed by the department. The affidavit must accompany the application for a replacement certificate of title provided for in 61-3-204 and is subject to the fees within that section. The affidavit must also include the last title or registration issued to the owner.

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) 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) request the return of the original title for vehicles 30 years or older, or whose certificates of title were removed from department records pursuant to [section 1], on a form prescribed by the department; and

~~(b)~~*(c)* 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. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [section 1].

Approved May 3, 2023

CHAPTER NO. 398

[HB 800]

AN ACT PROVIDING FOR THE LIMITED DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION THAT IS NOT PUBLIC CRIMINAL JUSTICE INFORMATION RELATED TO CRIMINALLY CHARGED INDIVIDUALS COMMITTED FOR MENTAL HEALTH SERVICES; ESTABLISHING ALLOWABLE USES; PROVIDING FOR REQUIREMENTS FOR REQUESTING CRIMINAL HISTORY RECORD INFORMATION THAT IS NOT PUBLIC CRIMINAL JUSTICE INFORMATION; PROVIDING FOR CONFIDENTIALITY OF INFORMATION; PROVIDING FOR A PENALTY FOR UNAUTHORIZED DISCLOSURE; AND AMENDING SECTION 44-5-302, MCA.

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

Section 1. Section 44-5-302, MCA, is amended to read:

"**44-5-302. Dissemination of criminal history record information that is not public criminal justice information.** (1) Criminal history record information may not be disseminated to agencies *or entities* other than criminal justice agencies unless:

(a) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(b) a district court considers dissemination necessary;

(c) the information is disseminated in compliance with 44-5-304; ~~or~~

(d) the information is disseminated on the written request of an entity providing residential treatment or care for an individual that is:

(i) licensed as a long-term care facility as defined in 50-5-101;

(ii) licensed as a community residential facility as defined in 76-2-411(1) or (3); or

(iii) providing a home-like setting for individuals working on maintaining their sobriety; or

~~(d)~~*(e)* the agency receiving the information is authorized by law to receive it.

(2) The department of justice and other criminal justice agencies may accept fingerprints of applicants for admission to the state bar of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the department or agency by the state bar, exchange available state, multistate, local, federal (to the extent allowed by federal law), and other criminal history record information with the Montana supreme court and its commission on character and fitness for licensing purposes.

(3) An entity meeting the requirements of subsection (1)(d) may receive the information on an individual who:

(a) is receiving or has requested services from an entity meeting the requirements of subsection (1)(d);

(b) is under a current order of commitment to the Montana state hospital or another mental health facility pursuant to 46-14-202 or 46-14-221 in connection with a prosecution in which the individual has been charged with a sexual offense or a violent offense, as defined in 46-23-502; or

(c) has been committed to the custody of the director of the department of public health and human services pursuant to 46-14-301 after being found not guilty of a sexual offense or a violent offense, as defined in 46-23-502, for the

reason that due to a mental disease or disorder the defendant could not have a particular state of mind that is an essential element of the offense charged.

(4) In making a request for criminal history record information, the entity requesting the information shall:

(a) obtain written consent to receive criminal history record information from the individual who is the subject of the proposed inquiry; and

(b) submit the written request for criminal history record information and any written consent from the individual about whom the information relates to the prosecutor or county attorney responsible for the prosecution, commitment, or disposition referenced in subsections (3)(b) and (3)(c).

(5) The prosecutor shall disseminate the requested criminal history record information to an entity meeting the requirements of subsection (1)(d) when the individual about whom the information relates has provided written consent to the dissemination.

(6) If an individual about whom the information relates and who meets the criteria described in subsection (3)(a), (3)(b), or (3)(c) objects to the dissemination of the information to an entity meeting the requirements of subsection (1)(d), the procedure described in 44-5-303(1) applies.

(7) (a) Confidential criminal justice information received pursuant to subsections (1)(d) and (3) may be shared only with employees of the entity requesting the information to make treatment-related decisions, including decisions related to the safety of the individual for whom criminal history record information was obtained and for other persons in the treatment setting. Any person receiving criminal history record information shall maintain the confidentiality of the information.

(b) A person who obtains confidential criminal justice information pursuant to subsections (1)(d) and (3) by misrepresenting the purpose of the request or who shares criminal history record information or any other confidential criminal justice information received pursuant to subsections (1)(d) and (3) with persons not authorized to receive the information is guilty of a misdemeanor and, on conviction, is punishable by a fine of not more than $1,000 or imprisonment in a county jail for a term not to exceed 1 year, or both."

Approved May 3, 2023

CHAPTER NO. 399

[HB 823]

AN ACT REVISING ALTERNATIVE FUEL TAX LAWS; PROVIDING FOR AN ALTERNATIVE FUEL DEALERS LICENSE; PROVIDING FOR A TAX ON HYDROGEN FUEL AND OTHER ALTERNATIVE FUELS EQUAL TO THE GASOLINE GALLON EQUIVALENCY; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-70-123, 15-70-124, 15-70-701, 15-70-702, 15-70-703, 15-70-704, 15-70-705, 15-70-706, 15-70-707, 15-70-711, 15-70-712, 15-70-713, 15-70-714, 15-70-715, 15-70-716, 15-70-717, AND 15-70-718, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 15-70-123, MCA, is amended to read:

"**15-70-123. Report by unlicensed ~~petroleum~~ *fuel* dealer -- definition -- penalty.** (1) The department of transportation may require a ~~petroleum~~ *fuel* dealer who is not licensed by the department under Title 15, chapter 70, to file, within 30 days of the end of a quarter, on a form prescribed by the department

a report of the amount of fuel received and sold during the quarter. The report must also contain other information as required by the department.

(2) As used in this section, "~~petroleum~~ *fuel* dealer" means a dealer who:

(a) is directly or indirectly engaged in delivering, transporting, or distributing gasoline, aviation gasoline, special fuel, ~~liquefied petroleum gas (LPG), or compressed natural gas (CNG)~~ *or alternative fuel* in this state; or

(b) offers or advertises to sell, refine, manufacture, or store gasoline, aviation gasoline, special fuel, ~~liquefied petroleum gas (LPG), or compressed natural gas (CNG)~~ *or alternative fuel* in this state.

(3) A ~~petroleum~~ *fuel* dealer who fails to file the report required by subsection (1) shall be fined $50 for the first offense, $75 for the second offense, and $100 for the third and each subsequent offense."

Section 2. Section 15-70-124, MCA, is amended to read:

"**15-70-124. Agreements with other governmental entities relating to collection of certain fuel taxes.** (1) The department of transportation may enter into agreements relating to the administration and taxation of gasoline, special fuels, and ~~liquefied petroleum gas~~ *alternative fuels* with state agencies of this state and other states, agencies of the federal government, and agencies of foreign governments and provinces.

(2) The agreements may cover audits, exchange of information, licensure of sellers and users, distribution, and other matters that the department considers necessary for the administration of the taxation of gasoline, special fuels, and ~~liquefied petroleum gas~~ *alternative fuels*. In an agreement, the department may not delegate powers to another governmental entity that involve levying fines, forfeitures, or penalties or that allow the other governmental entity to revoke or otherwise impair a license or permit issued by the department."

Section 3. Section 15-70-701, MCA, is amended to read:

"**15-70-701. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Alternative fuel" means a gas, liquid, or other fuel that, with or without adjustment or manipulation such as adjustment or manipulation of pressure or temperature, is capable of being used for the generation of power to propel a motor vehicle. The term includes but is not limited to compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, or hydrogen compressed natural gas, such as hythane.

(b) The term does not include motor fuel, leaded racing fuel, or an excluded liquid.

(2) "Alternative fuel dealer" means a person that is licensed or required to be licensed under 15-70-702 that delivers alternative fuel into the fuel supply tank or tanks of a motor vehicle.

~~(1)~~*(3)* "Bond" means:

(a) a bond executed by ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative fuel* dealer as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned ~~upon~~ *on* performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the ~~compressed natural gas dealer or the liquefied petroleum gas~~ *alternative fuel* dealer arising out of this part; or

(b) a deposit with the department by the ~~compressed natural gas dealer or the liquefied petroleum gas~~ *alternative fuel* dealer, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(2)~~*(4)* "Compressed natural gas" means a product that is used as a fuel and that contains carbon or hydrogen, or both, and is compressed to greater than 24 pounds per square inch absolute base pressure and up to 3,600 pounds per square inch absolute base pressure when sold for use in motor vehicles operated on the public roads and highways of this state.

~~(3) "Compressed natural gas dealer" or "dealer" means a person who delivers any part of compressed natural gas into the fuel supply tank or tanks of a motor vehicle.~~

~~(4)~~*(5)* "Department" means the department of transportation.

(6) "Hydrogen fuel" means fuel that produces energy by combining hydrogen and oxygen atoms.

~~(5)~~*(7)* "Liquefied petroleum gas" means any petroleum product that is sold for use in motor vehicles and that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons:

(a) propane;

(b) propylene;

(c) butane, including normal butane or isobutane; or

(d) butylene.

~~(6) "Liquefied petroleum gas dealer" or "dealer" means a person who delivers any part of liquefied petroleum gas into the fuel supply tank or tanks of a motor vehicle.~~

~~(7)~~*(8)* "Motor vehicle" means any vehicle that is self-propelled by ~~compressed natural gas or by liquefied petroleum gas~~ *alternative fuel* and that is driven ~~upon~~ *on* the public roads and highways of this state.

~~(8)~~*(9)* (a) "Person" means a person, firm, association, joint-stock company, syndicate, partnership, or corporation.

(b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, person means the partners or members of a firm, association, syndicate, or partnership. As applied to a joint-stock company or corporation, the term means the officers of the joint-stock company or corporation.

~~(9)~~*(10)* "Public roads and highways of this state" means all streets, roads, highways, and related structures that are:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state."

Section 4. Section 15-70-702, MCA, is amended to read:

"**15-70-702. ~~Compressed natural gas dealer's or liquefied petroleum gas~~ *Alternative fuel* dealer's license.** A person may not act as ~~a compressed natural gas dealer or as a liquefied petroleum gas~~ *an alternative fuel* dealer in this state unless the person holds a valid ~~compressed natural gas dealer's license or a valid liquefied petroleum gas~~ *alternative fuel* dealer's license issued by the department."

Section 5. Section 15-70-703, MCA, is amended to read:

"**15-70-703. Application for license.** An application for ~~a compressed natural gas dealer's license or a liquefied petroleum gas~~ *an alternative fuel* dealer's license must be filed on a form prescribed by the department. The application must contain information that the department considers necessary."

Section 6. Section 15-70-704, MCA, is amended to read:

"**15-70-704. Bonding, release of surety, and additional bond.** (1) Except as provided in this section, ~~a compressed natural gas dealer's license or a liquefied petroleum gas~~ *an alternative fuel* dealer's license may not be issued to a person and may not be continued in force unless the person has furnished a bond, in a form prescribed by the department, to secure the dealer's compliance with this part and has paid all taxes, interest, and penalties due under this part. The department shall waive the bond requirement of ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative fuel* dealer who is not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required must be equivalent to twice the ~~compressed natural gas dealer's or the liquefied petroleum gas~~ *alternative fuel* dealer's estimated quarterly tax payments but may not be less than $1,000 for any ~~compressed natural gas dealer or liquefied petroleum gas~~ *alternative fuel* dealer who:

(a) requests ~~a compressed natural gas dealer's or a liquefied petroleum gas~~ *an alternative fuel* dealer's license to be reissued after the license was canceled for cause; or

(b) fails to file timely reports and pay the tax due as required by 15-70-714.

(3) A surety on a bond furnished as provided in this section must be released and discharged from any liability to the state accruing on the bond after 30 days from the date when the surety has provided to the department a written request to be released and discharged. However, this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. ~~Upon~~ *On* receiving a release request, the department shall promptly notify the ~~compressed natural gas dealer or the liquefied petroleum gas~~ *alternative fuel* dealer who furnished the bond, and unless the dealer, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as described in ~~15-70-701(1)(b)~~ *15-70-701(3)(b)*, the department shall cancel the dealer's license.

(4) The department may require ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative fuel* dealer to give a new or additional surety bond or to deposit additional securities pursuant to ~~15-70-701(1)(b)~~ *15-70-701(3)(b)* if the department determines that the security of the surety bond previously filed by the dealer or the market value of the property deposited as security by the dealer is impaired or inadequate. If the ~~compressed natural gas dealer or the liquefied petroleum gas~~ *alternative fuel* dealer fails to give an additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the dealer's license."

Section 7. Section 15-70-705, MCA, is amended to read:

"**15-70-705. Issuance of license -- grounds for refusal -- hearing.** (1) Except as provided in subsection (2), ~~upon~~ *on* receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as ~~a compressed natural gas dealer or as a liquefied petroleum gas~~ *an alternative fuel* dealer. A license is valid until suspended, revoked for cause, or otherwise canceled.

(2) The department may refuse to issue ~~a compressed natural gas dealer's license or a liquefied petroleum gas~~ *an alternative fuel* dealer's license to any person:

(a) who formerly held a license that, prior to the time of filing the application, has been revoked for cause;

(b) who is not the real party in interest, and the license of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) ~~upon~~ *on* other sufficient cause being shown.

(3) Before refusing to issue a license, the department shall grant the applicant a hearing and shall provide the dealer with at least 10 days' written notice of the time and place of hearing.

(4) ~~A compressed natural gas dealer's license or a liquefied petroleum gas~~ *An alternative fuel* dealer's license is not transferable."

Section 8. Section 15-70-706, MCA, is amended to read:

"**15-70-706. Revocation of license -- notice.** (1) The department may revoke the license of any ~~compressed natural gas dealer or liquefied petroleum gas~~ *alternative fuel* dealer for reasonable cause. Before revoking a license, the department shall notify the licensee of the department's intent to revoke the license. The notice must be made by certified mail addressed to the licensee's last-known address shown in the files of the department. The notice must include a statement that the licensee has the right to appear before the department at a time specified in the notice and to show cause, if any, why the license should not be revoked. The time specified by the department may not be more than 30 days or less than 10 days from the date of the notice. At any time prior to and during the hearing, the department may in the exercise of reasonable discretion suspend the license.

(2) ~~Upon~~ *On* revocation of a license, the licensee shall immediately surrender the license to the department for cancellation."

Section 9. Section 15-70-707, MCA, is amended to read:

"**15-70-707. Cancellation of license ~~upon~~ *on* surrender.** The department shall cancel a license to act as ~~a compressed natural gas dealer or as a liquefied petroleum gas~~ *an alternative fuel* dealer immediately ~~upon~~ *on* surrender of the license by the licensee."

Section 10. Section 15-70-711, MCA, is amended to read:

"**15-70-711. Tax on compressed natural gas*, hydrogen fuel,*~~, tax on~~ liquefied petroleum gas*, and alternative fuels*.** (1) ~~Each compressed natural gas~~ *An alternative fuel* dealer shall collect the tax on compressed natural gas from the user at the time that the compressed natural gas is placed into the supply tank of a motor vehicle.

(2) (a) The total tax due on compressed natural gas is computed according to the formula provided in subsection (2)(b).

(b) T = (R/V) x TV, where:

(i) T is the total tax due;

(ii) R is 7 cents;

(iii) V is 120 cubic feet of compressed natural gas at 14.73 pounds per square inch absolute base pressure; and

(iv) TV is the total volume of compressed natural gas placed into the supply tank of a motor vehicle.

(3) The ~~compressed natural gas~~ *alternative fuel* dealer shall pay the tax to the department as provided in 15-70-714.

(4) ~~Each liquefied petroleum gas~~ *An alternative fuel* dealer shall collect the tax on liquefied petroleum gas from the user at the time that the liquefied petroleum gas is placed into the supply tank of a motor vehicle.

(5) (a) The total tax due on liquefied petroleum gas is computed according to the formula provided in subsection (5)(b).

(b) T = (C/G) x TG, where:

(i) T is the total tax due;

(ii) C is 5.18 cents;

(iii) G is 1 gallon of liquefied petroleum gas; and

(iv) TG is the total gallons of liquefied petroleum gas placed into the supply tank of a motor vehicle.

(6) The ~~liquefied petroleum gas~~ *alternative fuel* dealer shall pay the tax to the department as provided in 15-70-714.

(7) (a) The total tax due on hydrogen fuel is computed according to the formula provided in subsection (7)(b).

(b) T = KG x R, where:

(i) T is the total tax due;

(ii) KG is the total kilograms of hydrogen placed in the supply tank of a motor vehicle; and

(iii) R is the gasoline tax rate provided for in 15-70-403.

(8) The alternative fuel dealer shall pay the tax to the department as provided in 15-70-714.

~~(7)~~(9) A tax is imposed on alternative fuels not listed in subsection (2), (5), or (7). The tax due on other alternative fuels is computed according to the gasoline gallon equivalency by type of alternative fuel based on the current fuel properties comparison chart published by the U.S. department of energy multiplied by the gasoline tax rate provided for in 15-70-403.

(10) The United States, the state of Montana, and any political subdivision of this state are exempt from the levy and imposition of this tax."

Section 11. Section 15-70-712, MCA, is amended to read:

"**15-70-712. Recordkeeping.** (1) Each ~~compressed natural gas dealer, each liquefied petroleum gas~~ *alternative fuel* dealer~~,~~ and each person importing, manufacturing, refining, dealing in, transporting, or storing ~~compressed natural gas or liquefied petroleum gas~~ *alternative fuel* in this state shall keep all records, receipts, invoices, and other pertinent documents that the department may require and shall produce them for the inspection of the department at any time during regular business hours.

(2) The records, receipts, invoices, and other pertinent documents must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made."

Section 12. Section 15-70-713, MCA, is amended to read:

"**15-70-713. Examination of records -- enforcement -- reciprocity.** (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the records, receipts, invoices, documents, and equipment of any ~~compressed natural gas dealer, any liquefied petroleum gas dealer,~~ *alternative fuel dealer* or any person importing, manufacturing, refining, dealing in, transporting, or storing ~~compressed natural gas or liquefied petroleum gas~~ *alternative fuel* and may investigate the character of the disposition that any person makes of ~~compressed natural gas or liquefied petroleum gas~~ *alternative fuel* in order to determine whether all taxes due under this part are being properly reported and paid. If the records, receipts, invoices, documents, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department or at the business location of the dealer or other person and must, if requested by the department, be accompanied by the dealer or other person.

(3) The department shall, ~~upon~~ *on* request from an official who is responsible for the enforcement of the ~~compressed natural gas tax law or the liquefied petroleum gas~~ *alternative fuel* tax law of any other state, the District of Columbia, the United States, a territory or possession of the United States, or a province of Canada, forward to the official any information that it has relative to the receipt, storage, delivery, sale, use, or other disposition of ~~compressed natural gas or liquefied petroleum gas~~ *alternative fuel* by any ~~compressed~~

~~natural gas dealer or liquefied petroleum gas~~ *alternative fuel* dealer if the other governmental entity furnishes similar information to the department."

Section 13. Section 15-70-714, MCA, is amended to read:

"**15-70-714. Returns required -- payment.** (1) For the purpose of determining the amount of liability for the tax due under this part, ~~a compressed natural gas dealer and a liquefied petroleum gas~~ *an alternative fuel* dealer shall file with the department a quarterly tax return on forms prescribed by the department.

(2) The dealer shall file the return on or before the last day of the next calendar month following the quarter to which it relates. For good cause, the department may grant a taxpayer a reasonable extension of time for filing, but the extension may not exceed 30 days.

(3) The tax return must be accompanied by payment of the amount of tax due under 15-70-711 for ~~compressed natural gas or liquefied petroleum gas~~ *alternative fuel* sold during the preceding quarter."

Section 14. Section 15-70-715, MCA, is amended to read:

"**15-70-715. Penalties for refusal or failure to file return or pay tax when due.** (1) If ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative fuel* dealer refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-714, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. If ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative fuel* dealer establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty imposed by this section.

(2) Whenever ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative fuel* dealer files a return but fails to pay in whole or in part the tax due under this part, there must be added to the unpaid amount due interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full."

Section 15. Section 15-70-716, MCA, is amended to read:

"**15-70-716. Deficiency -- penalty.** If the department determines that the tax reported by ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative fuel* dealer is deficient, the department shall assess the deficiency on the basis of information available to the department. There must be added to the deficiency interest on the deficient amount at the rate of 1% a month or fraction of a month from the date on which the return was due."

Section 16. Section 15-70-717, MCA, is amended to read:

"**15-70-717. Determination if no return made -- penalty -- presumption.** (1) If ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative* dealer, whether or not the dealer is licensed, fails, neglects, or refuses to file ~~a compressed natural gas tax return or a liquefied petroleum gas~~ *an alternative fuel* tax return when due, the department shall, on the basis of information available to the department, determine the tax liability of the ~~compressed natural gas dealer or the liquefied petroleum gas~~ *alternative fuel* dealer for the period during which a return was not filed and add to the tax determined the penalty and interest provided for in 15-70-715.

(2) An assessment made by the department pursuant to 15-70-715, 15-70-716, or this section is presumed to be correct. Whenever the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by a preponderance of the evidence that it is erroneous or excessive."

Section 17. Section 15-70-718, MCA, is amended to read:

"**15-70-718. Fraudulent return -- penalty.** If ~~a compressed natural gas dealer or a liquefied petroleum gas~~ *an alternative fuel* dealer files a fraudulent return with intent to evade the tax imposed by this part:

(1) there must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at the rate of 1% a month or fraction of a month on the deficiency from the date on which the tax was due to the date of payment. The penalty and interest are in addition to all other penalties prescribed by law.

(2) the person is guilty of a misdemeanor and ~~upon~~ *on* conviction shall be punishable by a fine of not less than $100 or more than $2,000 or imprisonment of not less than 30 days or more than 6 months, or both."

Section 18. Transition. Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation.

Section 19. Effective date. (1) Except as provided in subsection (2), [this act] is effective January 1, 2024.

(2) [Section 18] and this section are effective October 1, 2023.

Approved May 3, 2023

CHAPTER NO. 400

[SB 74]

AN ACT GENERALLY REVISING LAWS RELATED TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; CORRECTING INTEREST PAID UPON REDEPOSITS OF REFUNDED CONTRIBUTIONS TO ACTUARIAL ASSUMED RATE OF RETURN; ALLOWING FOR LIMITED INFORMATION SHARING WITH EMPLOYERS; REQUIRING PAYMENT TO THE TRUST OF A MINOR BENEFICIARY; CLARIFYING THE APPLICATION OF EXCESS EARNINGS FOR CALCULATION OF HIGHEST AND FINAL AVERAGE COMPENSATION; REVISING THE DEFINITION OF COMPENSATION; REVISING MEMBERSHIP IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING PROVISIONS REGARDING THE TRANSFER AND PURCHASE OF SERVICE CREDITS FROM THE TEACHERS' RETIREMENT SYSTEM; ALLOWING MEMBERS TO VOLUNTARILY CANCEL A DISABILITY RETIREMENT BENEFIT; CLARIFYING THE DEFINITION OF "SHERIFF" RELATED TO THE SHERIFFS' RETIREMENT SYSTEM; PROVIDING A TIME LIMIT FOR BOARD APPROVAL OF LATE FIRE COMPANY ANNUAL CERTIFICATES AND TRAINING RECORDS; AMENDING SECTIONS 19-2-403, 19-2-603, 19-2-803, 19-2-1005, 19-3-108, 19-3-318, 19-3-403, 19-3-511, 19-3-1015, 19-3-1211, 19-5-612, 19-6-612, 19-7-101, 19-7-612, 19-8-712, 19-9-904, 19-13-805, AND 19-17-112, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 19-2-403, MCA, is amended to read:

"**19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems. A person whose job duties require proportional membership in more than one retirement system is subject to the provisions of those systems.

(5) If fraud or error results in an employee or member being reported to the incorrect retirement system, the board shall correct the error and adjust contributions as necessary.

(6) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(7) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(8) *(a)* The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(b) Information from a member's record may be shared with a member's employer only as far as necessary to conduct official business on behalf of the member.

(9) The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

(10) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(11) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(12) The board may implement third-party mailings under the provisions of 2-6-1017. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

(13) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books,

papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(14) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (13) or the contested case procedure of the Montana Administrative Procedure Act.

(15) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

Section 2. Section 19-2-603, MCA, is amended to read:

"**19-2-603. Reinstatement after withdrawal of contributions.** Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes an active member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person, while either an active or inactive vested member, may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus ~~the~~ interest ~~that would have been credited to the person's accumulated contributions had the refund not taken place~~ *at the actuarial assumed rate of return in effect at the time of the redeposit*. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated."

Section 3. Section 19-2-803, MCA, is amended to read:

"**19-2-803. Payment to custodian of minor beneficiary.** (1) Except as provided in subsection (2), if any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

(a) a surviving parent, if any;

(b) a parent awarded custody of the minor in a divorce proceeding;

(c) a custodian designated under Title 72, chapter 26;

(d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or

(e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) ~~If any benefit payable from the highway patrol officers' retirement system under chapter 6 of this title, the municipal police officers' retirement system under chapter 9 of this title, or the firefighters' unified retirement system under chapter 13 of this title is payable to a statutory beneficiary who is a dependent child, as defined under the provisions of that system, of a system member and the system member has established a trust for the dependent child,~~ *When a system member has established a trust for a minor beneficiary, including a dependent child as defined under the provisions of Title 19, chapter 6, 9, or 13,* then the benefit must be paid to the trustee of that trust.

(3) The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person receiving benefit payments pursuant to this section shall account to the minor for the money when the minor reaches the age of majority."

Section 4. Section 19-2-1005, MCA, is amended to read:

"**19-2-1005. Compensation limit.** (1) A retirement system or plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in section 401(a)(17) of the Internal Revenue Code,

26 U.S.C. 401(a)(17), as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B).

(2) (a) Except as provided in subsection (2)(b), for a member hired on or after July 1, 2013, *when calculating the highest average compensation for a member with at least 72 months of service credit or the final average compensation for a member with 48 months of service credit,* a retirement system or plan subject to this chapter may not include the following amounts of excess earnings in the calculation of ~~a~~ *the* member's highest average compensation or final average compensation:

(i) for the first year included in the calculation, any compensation that is greater than 110% of the compensation paid to the member in the previous year; and

(ii) for each subsequent year included in the calculation, any compensation that is greater than 110% of the compensation included in the calculation for the previous year.

(b) In determining a member's retirement benefit, total excess earnings, if any, must be divided by the member's total months of service credit and added to each month's compensation included in the member's highest average compensation or final average compensation as limited under subsection (2)(a)."

Section 5. Section 19-3-108, MCA, is amended to read:

"**19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403~~(4)(a)~~*(6)(a)* for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704;

(v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid without termination of employment; ~~or~~

(vi) bonuses provided after July 1, 2013, that are one-time~~,~~ *or* temporary payments in addition to and not considered part of base pay.*;*

(vii) remuneration paid to a member to reimburse the member for what would normally be the employer's costs of doing business, such as for workstation equipment or telecom services to facilitate telework; or

(viii) volunteer stipends.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) "Highest average compensation" means:

(i) for a member hired prior to July 1, 2011, the highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for a member hired on or after July 1, 2011, the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of service, the total compensation earned divided by the months of membership service.

(b) Lump-sum payments for compensatory leave, sick leave, banked holiday time, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 6. Section 19-3-318, MCA, is amended to read:

"**19-3-318. Credit of contributions made after member becomes inactive.** Contributions made on the basis of compensation earned by members after they are considered to be inactive members, as provided in 19-3-403~~(4)~~*(6)*, must be credited to the employer."

Section 7. Section 19-3-403, MCA, is amended to read:

"**19-3-403. Exclusions from membership.** The following persons may not become members of the retirement system and, except as provided in subsection ~~(7)~~ *(9)*, may not later purchase previous service under 19-3-505:

(1) inmates or residents of state institutions or correctional institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) volunteers;

(5) student interns, except that a student intern who later becomes an active member by otherwise becoming an employee may, after becoming an active member, affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing to become eligible to receive service credit for the excluded service under the provisions of 19-3-505;

~~(4)~~*(6)* persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection ~~(4)~~ *(6)*, persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

~~(5)~~*(7)* substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

~~(6)~~*(8)* court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

~~(7)~~*(9)* full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505;

~~(8)~~*(10)* county school superintendents who are required by 19-20-302(1)(g) and (2) to be members of the teachers' retirement system provided for in Title 19, chapter 20."

Section 8. Section 19-3-511, MCA, is amended to read:

"**19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system.** (1) Except as provided in subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service credit under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer *employer contributions directly to the public employees' retirement system in* an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system *as follows:*~~, based on the interest tables in use by the teachers' retirement system.~~

(i) for a direct transfer of member contributions, at the interest rate credited by the teachers' retirement system to member accounts; or

(ii) for a redeposit of refunded member contributions, at the public employees' retirement system's actuarial assumed rate of return in effect at the time of redeposit.

(3) (a) The amount of service credit granted in subsection (1) must be ~~on a month-by-month basis~~ *equal to the service credit that had been on account with the teachers' retirement system*.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514, except as provided in subsection (3)(c).

(c) Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) ~~If an active member who has service credit in the teachers' retirement system dies before the member purchases this service credit in the public employees' retirement system and if the service credit from both systems, when combined, entitles the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to purchase this service credit in the public employees' retirement system, as provided in subsection (2)~~ *When an active member of the public employees' retirement system dies while also having service credit on account with the teachers' retirement system, the deceased member's designated beneficiary may apply to have the member's service transferred from the teachers' retirement system if all of the following requirements are met:*

(a) the member had not previously retired under either retirement system;

(b) the member was not vested with either system at the time of death;

(c) the member's total creditable service following transfer would entitle the designated beneficiary to receive a survivor benefit from the public employees' retirement system in the form of a monthly benefit payable for the beneficiary's lifetime;

(d) at least one individual designated beneficiary will be electing a survivorship benefit;

(e) the designated beneficiary who is entitled to payment on behalf of the member is the same individual in each retirement system; and

(f) the transfer of service credit to the public employees' retirement system is upon a full withdrawal of the member's service credit from the teachers' retirement system.

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service credit, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request."

Section 9. Section 19-3-1015, MCA, is amended to read:

"**19-3-1015. Medical examination of disability retiree -- cancellation and reinstatement.** (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether

the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer forfeits any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member is considered, for the purposes of 19-2-602, to have terminated service coincident with the commencement of the member's retirement benefit.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 10. Section 19-3-1211, MCA, is amended to read:

"**19-3-1211. Refund when former member dies after transferring to another system.** The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403~~(4)~~*(6)* and before receiving the member's accumulated contributions must be paid to the designated beneficiary."

Section 11. Section 19-5-612, MCA, is amended to read:

"**19-5-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the

essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit.

(3) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 12. Section 19-6-612, MCA, is amended to read:

"**19-6-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall

immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 13. Section 19-7-101, MCA, is amended to read:

"**19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) maintenance, allowances, and expenses; or

(ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.

(2) "Detention officer" means any detention officer who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set for detention officers by the Montana public safety officer standards and training council established in 2-15-2029.

(3) (a) "Highest average compensation" means:

(i) for members hired prior to July 1, 2011, the member's highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for members hired on or after July 1, 2011, the highest average compensation during any 60 consecutive months of membership service; or

(iii) if a member has not served the minimum specified period of membership service as applicable in subsection (3)(a)(i) or (3)(a)(ii), the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for compensatory leave, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(4) "Investigator" means a person who is employed by the department of justice as a criminal investigator or as a gambling investigator.

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and ~~regularly acting~~ *full-time* deputy sheriff with the requisite professional certification and licensing."

Section 14. Section 19-7-612, MCA, is amended to read:

"**19-7-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the

recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's office. If the board's findings are upheld, the public body shall pay the cost of the review.

(4) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 15. Section 19-8-712, MCA, is amended to read:

"**19-8-712. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review.

(5) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 16. Section 19-9-904, MCA, is amended to read:

"**19-9-904. Termination of disability benefit.** *(1)* The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time.

(2) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 17. Section 19-13-805, MCA, is amended to read:

"**19-13-805. Reinstatement upon termination of benefit.** (1) (a) Except as provided in subsection (1)(c), a member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(2) The employer may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the employer shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly.

(4) If a disabled member who is receiving a disability retirement benefit independently determines that the member is no longer disabled as that term is defined in 19-2-303 and returns to covered employment, the member shall immediately notify retirement system administrative staff so that the member's disability retirement benefit is canceled."

Section 18. Section 19-17-112, MCA, is amended to read:

"**19-17-112. Filing required reports -- limitations.** (1) The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file with the board an annual certificate, the current year's roster, and a membership card for each new member.

(2) (a) The annual certificate is a form reporting a fire company's membership eligibility for the previous fiscal year.

(b) The annual certificate must be completed on a form prescribed by the board and contain the date of organization of the fire company and the full name and date of birth of each member of the fire company who was a member for the entire fiscal year and who successfully completed 30 hours of training during the preceding fiscal year, as required by 19-17-108.

(c) The chief or designated official shall subscribe and verify that the fire company and members qualified under 19-17-108 and 19-17-109.

(d) The board shall maintain the certificate for the purpose of establishing service for members and eligibility for benefits.

(3) The roster must be signed by the fire chief or designated official, filed with the board, and contain information in writing that provides the names of the fire company, its date of organization, officers, and roll of active and inactive members for the current fiscal year. A roster may be updated to report new members but may not be retroactive.

(4) A membership form must be completed and filed with the board for each member who was a member on or before July 1, 2011, and for each new member who joins after July 1, 2011.

(5) The current fire chief shall file any late or amended annual certificates and the associated certified training records within 3 years of the original annual certificate due date. An annual certificate may be amended only once. The board shall consider and may approve ~~late~~ filings *up to 3 years after the original due date*. Information provided to the board by the fire chief must be in accordance with the board's rules.

(6) The current fire chief may request to appear before the board for consideration of the request to file a late or amended annual certificate."

Section 19. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Sections 2 and 8] are effective July 1, 2024.

Approved May 4, 2023

CHAPTER NO. 401

[SB 143]

AN ACT PROVIDING FOR A REFERENDUM TO TERMINATE A CITIZEN-INITIATED ZONING DISTRICT; REMOVING CERTAIN PROTEST PROVISIONS THAT HAVE BEEN INVALIDATED BY DISTRICT COURT; AMENDING SECTION 76-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 76-2-101, MCA, is amended to read:

"**76-2-101. Planning and zoning commission and district.** (1) Subject to the provisions of ~~subsections (5) and (6)~~ *subsection (5)*, whenever the public interest or convenience may require and ~~upon~~ *on* petition of 60% of the affected real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and may appoint a planning and zoning commission consisting of up to seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) ~~Except as provided in subsection (5), an~~ *An* action challenging the ~~creation of~~ *process to create* a planning and zoning district must begin within 6 months after the date of the order by the board of county commissioners creating the district.

~~(5) If real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 90 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year.~~

~~(6)~~*(5)* (a) Before the board of county commissioners determines whether the number of affected real property owners necessary to meet the petition requirement of subsection (1) has been met, draft documents of the proposed materials that may potentially govern the proposed district must be made available to the board of county commissioners. Draft documents of the proposed materials required in this subsection ~~(6)~~ *(5)* may include but are not limited to drafts of:

(i) a development pattern as provided in 76-2-104;

(ii) a resolution as provided in 76-2-107; and

(iii) the land use and zoning regulations as provided in 76-2-107.

(b) The final adopted development pattern, resolutions, and other materials that govern the zoning district as required in 76-2-104 and 76-2-107 must be similar to the draft documents provided to the county commissioners as required in subsection ~~(6)(a)~~ *(5)(a)*."

Section 2. Referendum to terminate zoning district. (1) Real property owners in a zoning district may petition the board of county commissioners to submit a referendum to the registered electors residing in the zoning district to terminate the zoning district. The petition must be in writing and contain the signatures and addresses of 20% or more of the real property owners in the zoning district. The petition requesting a referendum for the termination of a zoning district must be delivered to the county clerk and recorder, who shall endorse on it the date when the petition was received and validate the signatures within 60 days of receipt of the petition. If the petition contains

valid signatures of at least 20% of the real property owners within the zoning district, the county clerk and recorder shall notify the county commissioners.

(2) On receipt of a valid petition described in subsection (1), the county commissioners shall submit the referendum to the registered electors residing in the district in an election conducted pursuant to Title 13, chapter 1, part 4 or 5

(3) If the referendum described in subsection (1) and conducted under subsection (2) is not successful, the real property owners in the zoning district may not bring forth a subsequent referendum petition for 3 years from the date that the original referendum was submitted to the registered electors pursuant to subsection (2).

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 2].

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

Section 5. Applicability. [This act] applies to zoning districts created pursuant to Title 76, chapter 2, part 1, on or after January 1, 2023.

Approved May 3, 2023

CHAPTER NO. 402

[SB 154]

AN ACT DEFINING THE RIGHT TO INDIVIDUAL PRIVACY; CLARIFYING THE RIGHT OF PRIVACY DOES NOT INCLUDE THE RIGHT TO ABORTION.

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

Section 1. Construction of right of individual privacy. The right of individual privacy as referenced in the Montana constitution, the Montana Code Annotated, or the Administrative Rules of Montana does not create, and may not be construed as creating or recognizing, a right to abortion or to governmental funding of abortion.

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

Approved May 3, 2023

CHAPTER NO. 403

[SB 155]

AN ACT ADOPTING AN INTERSTATE OCCUPATIONAL THERAPY LICENSURE COMPACT, WHICH INCLUDES RULEMAKING PROVISIONS; AND PROVIDING A PROCESS FOR CRIMINAL RECORD BACKGROUND CHECKS.

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

Section 1. Occupational therapy licensure compact enactment – provisions. The Occupational Therapy Licensure Compact is enacted into law and entered into with all jurisdictions legally joining in the compact, in the form substantially as set forth below.

SECTION 1. PURPOSE

The purpose of this compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The practice of occupational therapy occurs in the state where the

patient or client is located at the time of the patient or client encounter with an occupational therapist or occupational therapy assistant. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This compact is designed to achieve the following objectives:

(1) increase public access to occupational therapy services by providing for the mutual recognition of other member state licenses;

(2) enhance the states' ability to protect the public's health and safety;

(3) encourage the cooperation of member states in regulating multi-state occupational therapy practice;

(4) support spouses of relocating military members;

(5) enhance the exchange of licensure, investigative, and disciplinary information between member states;

(6) allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and

(7) facilitate the use of telehealth technology in order to increase access to occupational therapy services.

SECTION 2. DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions shall apply:

(1) "Active-duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active-duty orders pursuant to 10 U.S.C. Chapter 1209 and 10 U.S.C. Chapter 1211.

(2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an occupational therapist or occupational therapy assistant, including actions against an individual's license or compact privilege such as censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.

(3) "Alternative program" means a nondisciplinary monitoring process approved by an occupational therapy licensing board.

(4) "Compact privilege" means the authorization, which is equivalent to a license, granted by a remote state to allow a licensee from another member state to practice as an occupational therapist or practice as an occupational therapy assistant in the remote state under its laws and rules. The practice of occupational therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter.

(5) "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.

(6) "Current significant investigative information" means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the occupational therapist or occupational therapy assistant to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(7) "Data system" means a repository of information about licensees, including but not limited to license status, investigative information, compact privileges, and adverse actions.

(8) "Encumbered license" means a license in which an adverse action restricts the practice of occupational therapy by the licensee or said adverse action has been reported to the national practitioners data bank.

(9) "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(10) "Home state" means the member state that is the licensee's primary state of residence.

(11) "Impaired practitioner" means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

(12) "Investigative information" means information, records, and documents received or generated by an occupational therapy licensing board pursuant to an investigation.

(13) "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of occupational therapy in a state.

(14) "Licensee" means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant.

(15) "Member state" means a state that has enacted the compact.

(16) "Occupational therapist" means an individual who is licensed by a state to practice occupational therapy.

(17) "Occupational therapy assistant" means an individual who is licensed by a state to assist in the practice of occupational therapy.

(18) "Occupational therapy", "occupational therapy practice", and the "practice of occupational therapy" mean the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the member state's statutes and regulations.

(19) "Occupational therapy compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

(20) "Occupational therapy licensing board" or "licensing board" means the agency of a state that is authorized to license and regulate occupational therapists and occupational therapy assistants.

(21) "Primary state of residence" means the state, also known as the home state, in which an occupational therapist or occupational therapy assistant who is not active-duty military declares a primary residence for legal purposes as verified by a driver's license, federal income tax return, lease, deed, mortgage, or voter registration or other verifying documentation as further defined by commission rules.

(22) "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

(23) "Rule" means a regulation promulgated by the commission that has the force of law.

(24) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of occupational therapy.

(25) "Single-state license" means an occupational therapist or occupational therapy assistant license issued by a member state that authorizes practice only within the issuing state and does not include a compact privilege in any other member state.

(26) "Telehealth" means the application of telecommunication technology to deliver occupational therapy services for assessment, intervention, and consultation.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

(1) To participate in the compact, a member state shall:

(a) license occupational therapists and occupational therapy assistants;

(b) participate fully in the commission's data system, including but not limited to using the commission's unique identifier as defined in rules of the commission;

(c) have a mechanism in place for receiving and investigating complaints about licensees;

(d) notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

(e) implement or utilize procedures for considering the criminal history records of applicants for an initial compact privilege. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

(i) A member state shall, within a time frame established by the commission, require a criminal background check for a licensee seeking or applying for a compact privilege whose primary state of residence is that member state, by receiving the results of the federal bureau of investigation criminal record search, and shall use the results in making licensure decisions.

(ii) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the federal bureau of investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

(f) comply with the rules of the commission;

(g) use a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

(h) have continuing competence requirements as a condition for license renewal.

(2) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(3) A member state may charge a fee for granting a compact privilege.

(4) A member state shall provide for the state's delegate to attend all occupational therapy compact commission meetings.

(5) An individual not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals may not be recognized as granting the compact privilege in any other member state.

(6) Nothing in this compact shall affect the requirements established by a member state for the issuance of a single-state license.

SECTION 4. COMPACT PRIVILEGE

(1) To exercise the compact privilege under the terms and provisions of the compact, the licensee:

(a) must be licensed in the home state;

(b) must have a valid United States social security number or national practitioner identification number;

(c) may not have an encumbrance on any state license;

(d) must be eligible for a compact privilege in any member state in accordance with subsections (4), (6), (7), and (8) of this section;

(e) must have paid all fines and completed all requirements resulting from any adverse action against any license or compact privilege, and 2 years have elapsed from the date of such completion;

(f) shall notify the commission that the licensee is seeking the compact privilege within a remote state or remote states;

(g) shall pay any applicable fees, including any state fee, for the compact privilege;

(h) shall complete a criminal background check in accordance with Section 3, subsection (1)(e). The licensee shall be responsible for the payment of any fee associated with the completion of a criminal background check.

(i) shall meet any jurisprudence requirements established by the remote state or remote states in which the licensee is seeking a compact privilege; and

(j) shall report to the commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

(2) The compact privilege is valid until the expiration date of the home state license. The licensee shall comply with the requirements of subsection (1) to maintain the compact privilege in the remote state.

(3) A licensee providing occupational therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(4) Occupational therapy assistants practicing in a remote state shall be supervised by an occupational therapist licensed or holding a compact privilege in that remote state.

(5) A licensee providing occupational therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(6) If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

(a) the home state license is no longer encumbered; and

(b) 2 years have elapsed from the date on which the home state license is no longer encumbered in accordance with subsection (6)(a) of this section.

(7) Once an encumbered license in the home state is restored to good standing, the licensee shall meet the requirements of subsection (1) to obtain a compact privilege in any remote state.

(8) If a licensee's compact privilege in any remote state is removed, the individual may lose the compact privilege in any other remote state until the following occur:

(a) the specific period of time for which the compact privilege was removed has ended;

(b) all fines have been paid and all conditions have been met;

(c) 2 years have elapsed from the date of completing requirements for subsections (8)(a) and (b) of this section; and

(d) the compact privileges are reinstated by the commission, and the compact data system is updated to reflect reinstatement.

(9) If a licensee's compact privilege in any remote state is removed due to an erroneous charge, privileges shall be restored through the compact data system.

(10) Once the requirements of subsection (8) have been met, the licensee shall meet the requirements in subsection (1) to obtain a compact privilege in a remote state.

SECTION 5. OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT PRIVILEGE

(1) An occupational therapist or occupational therapy assistant may hold a home state license, which allows for compact privileges in member states, in only one member state at a time.

(2) If an occupational therapist or occupational therapy assistant changes primary state of residence by moving between two member states:

(a) the occupational therapist or occupational therapy assistant shall file an application for obtaining a new home state license by virtue of a compact privilege, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission;

(b) upon receipt of an application for obtaining a new home state license by virtue of compact privilege, the new home state shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in Section 4 via the data system, without need for primary source verification except for:

(i) a federal bureau of investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law 92-544;

(ii) other criminal background check as required by the new home state; and

(iii) submission of any requisite jurisprudence requirements of the new home state;

(c) the former home state shall convert the former home state license into a compact privilege once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission;

(d) notwithstanding any other provision of this compact, if the occupational therapist or occupational therapy assistant cannot meet the criteria in Section 4, the new home state shall apply its requirements for issuing a new single-state license;

(e) the occupational therapist or the occupational therapy assistant shall pay all applicable fees to the new home state in order to be issued a new home state license.

(3) If an occupational therapist or occupational therapy assistant changes primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria shall apply for issuance of a single-state license in the new state.

(4) Nothing in this compact shall interfere with a licensee's ability to hold a single-state license in multiple states; however, for the purposes of this compact, a licensee shall have only one home state license.

(5) Nothing in this compact shall affect the requirements established by a member state for the issuance of a single-state license.

SECTION 6. ACTIVE-DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active-duty military personnel, or their spouses, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change their home state through application for licensure in the new state or through the process described in Section 5.

SECTION 7. ADVERSE ACTIONS

(1) A home state has exclusive power to impose adverse action against a license issued by the home state.

(2) In addition to the other powers conferred by state law, a remote state has the authority, in accordance with existing state due process law, to:

(a) take adverse action against a licensee's compact privilege within that member state;

(b) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(3) For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(4) The home state shall complete any pending investigations of an occupational therapist or occupational therapy assistant who changes primary state of residence during the course of the investigations. The home state, where the investigations were initiated, shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the occupational therapy compact commission data system. The occupational therapy compact commission data system administrator shall promptly notify the new home state of any adverse actions.

(5) A member state, if otherwise permitted by state law, may recover from the affected occupational therapist or occupational therapy assistant the costs of investigations and disposition of cases resulting from any adverse action taken against that occupational therapist or occupational therapy assistant.

(6) A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its own procedures for taking the adverse action.

(7) (a) In addition to the authority granted to a member state by its respective state occupational therapy laws and regulations or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

(b) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(8) If an adverse action is taken by the home state against a licensee's license, the licensee's compact privilege in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against a licensee's license shall include a statement that the licensee's compact privilege is deactivated in all member states during the pendency of the order.

(9) If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

(10) Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

SECTION 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT COMMISSION

(1) The compact member states hereby create and establish a joint public agency known as the occupational therapy compact commission:

(a) The commission is an instrumentality of the compact states.

(b) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(c) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(2) (a) Each member state has and is limited to one delegate selected by that member state's licensing board.

(b) The delegate must be either a current member of the licensing board, who is an occupational therapist, occupational therapy assistant, a public member, or a board administrator.

(c) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(d) The member state board shall fill any vacancy occurring in the commission within 90 days.

(e) Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(f) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(g) The commission shall establish by rule a term of office for delegates.

(3) The commission has the power and duty to:

(a) establish a code of ethics for the commission;

(b) establish the fiscal year of the commission;

(c) establish bylaws;

(d) maintain its financial records in accordance with the bylaws;

(e) meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(f) promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states.

(g) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state occupational therapy licensing board to sue or be sued under applicable law must not be affected;

(h) purchase and maintain insurance and bonds;

(i) borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

(j) hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(k) accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and receive, utilize, and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(l) lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

(m) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(n) establish a budget and make expenditures;

(o) borrow money;

(p) appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(q) provide and receive information from, and cooperate with, law enforcement agencies;

(r) establish and elect an executive committee; and

(s) perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of occupational therapy licensure and practice.

(4) The executive committee has the power to act on behalf of the commission according to the terms of this compact.

(a) The executive committee is composed of nine members, of which:

(i) seven voting members are to be elected by the commission from the current membership of the commission;

(ii) one ex-officio, nonvoting member must be from a recognized national occupational therapy professional association; and

(iii) one ex-officio, nonvoting member must be from a recognized national occupational therapy certification organization.

(b) The ex-officio members are to be selected by their respective organizations.

(c) The commission may remove any member of the executive committee as provided in bylaws.

(d) The executive committee shall meet at least annually.

(e) The executive committee has the following duties and responsibilities:

(i) recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;

(ii) ensure compact administration services are appropriately provided, contractual or otherwise;

(iii) prepare and recommend the budget;

(iv) maintain financial records on behalf of the commission;

(v) monitor compact compliance of member states and provide compliance reports to the commission;

(vi) establish additional committees as necessary; and

(vii) perform other duties as provided in rules or bylaws.

(5) (a) All meetings of the commission must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Section 10.

(b) The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission must discuss:

(i) noncompliance of a member state with its obligations under the compact;

(ii) the employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) current, threatened, or reasonably anticipated litigation;

(iv) negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(v) accusing any person of a crime or formally censuring any person;

(vi) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) disclosure of investigative records compiled for law enforcement purposes;

(ix) disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(x) matters specifically exempted from disclosure by federal or member state statute.

(c) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(d) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(6) The commission:

(a) shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities;

(b) may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services;

(c) may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(d) may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state;

(e) shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(7) (a) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(b) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 9. DATA SYSTEM

(1) The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(2) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable, utilizing a unique identifier, as required by the rules of the commission, including:

(a) identifying information;

(b) licensure data;

(c) adverse actions against a license or compact privilege;

(d) nonconfidential information related to alternative program participation;

(e) any denial of application for licensure, and the reason for such denial;

(f) other information that may facilitate the administration of this compact, as determined by the rules of the commission; and

(g) current significant investigative information.

(3) Current significant investigative information and other investigative information pertaining to a licensee in any member state is only available to other member states.

(4) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

(5) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(6) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 10. RULEMAKING

(1) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted under this section. Rules and amendments become binding as of the date specified in each rule or amendment.

(2) The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

(3) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within 4 years of the date of adoption of the rule, then that rule has no further force and effect in any member state.

(4) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.

(5) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) on the website of the commission or other publicly accessible platform; and

(b) on the website of each member state occupational therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(6) The notice of proposed rulemaking shall include:

(a) the proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(b) the text of the proposed rule or amendment and the reason for the proposed rule;

(c) a request for comments on the proposed rule from any interested person; and

(d) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(7) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(8) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(a) at least 25 persons;

(b) a state or federal governmental subdivision or agency; or

(c) an association or organization having at least 25 members.

(9) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(a) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than 5 business days before the scheduled date of the hearing.

(b) Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) All hearings must be recorded and copies of the recording are to be made available on request.

(d) This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(10) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(11) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

(12) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(13) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(a) meet an imminent threat to public health, safety, or welfare;

(b) prevent a loss of commission or member state funds;

(c) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(d) protect public health and safety.

(14) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision takes effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

(1) (a) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

(c) The commission is entitled to receive service of process in any proceeding described in subsection (1)(b) of this section and has standing to intervene in that proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, the compact, or promulgated rules.

(2) (a) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide:

(i) written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

(ii) remedial training and specific technical assistance regarding the default.

(b) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(c) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(d) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(e) The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(f) The defaulting state may appeal the action of the commission by petitioning the U.S. district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of such litigation, including reasonable attorney fees.

(3) (a) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

(b) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(4) (a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(b) By majority vote, the commission may initiate legal action in the U.S. district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney fees.

(c) The remedies in this section are not to be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

SECTION 12. DATE OF IMPLEMENTATION OF THE INTERSTATE COMPACT FOR OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

(1) The compact is effective in this state on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(2) Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.

(3) Any member state may withdraw from this compact by enacting a statute repealing the compact.

(a) A member state's withdrawal does not take effect until 6 months after enactment of the repealing statute.

(b) Withdrawal does not affect the continuing requirement of the withdrawing state's occupational therapy licensing board to comply with the

investigative and adverse action reporting requirements in [section 1] prior to the effective date of withdrawal.

(4) This compact may not be construed to invalidate or prevent any occupational therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(5) This compact may be amended by the member states. An amendment to this compact does not become effective and binding upon any member state until the amendment is enacted into the laws of all member states.

SECTION 13. CONSTRUCTION AND SEVERABILITY

This compact is to be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance is not affected by the holding of invalidity. If this compact is held contrary to the constitution of any member state, the compact remains in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) A licensee providing occupational therapy in a remote state under the compact privilege must function within the laws and regulations of the remote state.

(2) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(3) Any laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(4) Any lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(5) All agreements between the commission and the member states are binding in accordance with their terms.

(6) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Section 2. Criminal record background check. (1) As provided in 37-1-307, the board shall require each applicant for licensure as an occupational therapist or occupational therapy assistant to submit 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.

(2) The board may require licensees renewing their licenses to submit a full set of their fingerprints to the board for the purposes of obtaining a criminal record background check by the Montana department of justice and the federal bureau of investigation.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 24, and the provisions of Title 37, chapter 24, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 24, part 3, and the provisions of Title 37, chapter 24, part 3, apply to [Section 2].

Approved May 3, 2023

CHAPTER NO. 404

[SB 281]

AN ACT REVISING LAWS RELATED TO THE ISSUANCE OF CLASS B-8 NONRESIDENT DEER B TAGS; AMENDING SECTIONS 87-2-104 AND 87-2-504, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-2-104, MCA, is amended to read:

"**87-2-104. Number of licenses, permits, or tags allowed -- fees.** (1) The department may prescribe rules and regulations for the issuance or sale of a replacement license, permit, or tag if the original license, permit, or tag is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(2) The department shall issue a replacement license, permit, or tag to a person who lawfully harvested a game animal but the meat of the animal was determined by the department to be unfit for human consumption due to disease or prior injury. To obtain a replacement license, permit, or tag pursuant to this subsection, the person:

(a) shall surrender the entire animal determined to be unfit for human consumption; and

(b) may choose to be issued the replacement for the same license year or the next license year.

(3) When authorized by the commission for game management purposes, the department may:

(a) issue more than one Class A-3 resident deer A, Class A-4 resident deer B, Class B-7 nonresident deer A, ~~Class B-8 nonresident deer B,~~ Class E-1 resident wolf, Class E-2 nonresident wolf, or special antelope license to an applicant;

(b) issue a special antlerless moose license, a special cow or calf bison license, or one or more special adult ewe mountain sheep licenses to an applicant; and

(c) issue one or more Class A-9 resident antlerless elk B tag licenses or Class B-12 nonresident antlerless elk B tag licenses to an applicant. Unless otherwise reduced pursuant to subsection ~~(5)~~ *(6)*, the fee for a Class B-12 license is $270.

(4) For all of the game management licenses issued under subsection (3), the commission shall determine the hunting districts or portions of hunting districts for which the licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(5) Unless otherwise determined by the commission, a holder of a valid Class B-10 nonresident big game combination license or a valid Class B-11 nonresident deer combination license may purchase up to two Class B-8 nonresident deer B tags while other eligible persons may purchase only one. The commission shall determine the hunting districts or portions of hunting districts for which the tags are valid and all terms and conditions for the use of the tags.

~~(5)~~*(6)* The fee for a resident or nonresident license of any class issued under ~~subsection~~ *subsections* (3) *and (5)* may be reduced annually by the department."

Section 2. 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 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~~ *Subject to the provisions of 87-2-104, 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 3. Effective date. [This act] is effective March 1, 2024.

Approved May 3, 2023

CHAPTER NO. 405

[SB 284]

AN ACT REVISING LAWS RELATED TO REPORTING OF DRUGS TAKEN BY OR PRESCRIBED TO INDIVIDUALS WHOSE DEATHS ARE RULED TO BE SUICIDE; LIMITED SHARING OF REGISTRY INFORMATION INVOLVING INDIVIDUALS WHO COMPLETED SUICIDE; REQUIRING CORONERS TO REPORT AVAILABLE TOXICOLOGY RESULTS FOR INDIVIDUALS WHO COMPLETED SUICIDE; REQUIRING A REPORT ON TOXICOLOGY AND CONTROLLED SUBSTANCES INFORMATION IN DEATHS RULED TO BE A SUICIDE; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-7-1506, 46-4-123, AND 53-21-1101, MCA.

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

Section 1. 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) in accordance with the requirements of subsection (3), a designated representative of the department of public health and human services making an inquiry in accordance with 53-21-1101;

~~(e)~~*(f)* 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)~~*(g)* 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)~~*(h)* 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) *(a)* 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.

(b) Without identifying the individual, the information released to the department of public health and human services for the purposes of subsection (1)(e) must include a list of all controlled substances dispensed to each person whose death was ruled to be a suicide.

(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.

(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.

(8) The procedures established by the board under this section may not impede patient access to prescription drugs for legitimate medical purposes."

Section 2. Section 46-4-123, MCA, is amended to read:

"**46-4-123. Inquiry report.** (1) The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of 46-4-122.

(2) The inquiry report must be:

(a) made using the Montana coroner death management system, if implemented and operational by the local agency;

(b) initiated within 24 hours after the death investigation; and

(c) completed as promptly as reasonable and commensurate with the availability of investigation information, excluding confidential criminal justice information and any other investigative material not necessary to determine cause or manner of death until the case is closed or charges are filed.

(3) For a death ruled to be a suicide, the report must include the results of any toxicology testing done as a part of the inquiry. The coroner of a county that has not implemented the Montana coroner death management system shall report the information required under this subsection to the department of public health and human services in the manner prescribed by the department.

~~(3)~~*(4)* The coroner and the medical examiner must each have access to the system. The coroner shall make a copy of the system inquiry report available to the county attorney."

Section 3. Section 53-21-1101, MCA, is amended to read:

"**53-21-1101. Suicide prevention officer -- duties.** (1) The department shall implement a suicide prevention program administered by a suicide prevention officer attached to the division responsible for administering adult mental health services. The program must be informed by the best available evidence.

(2) The suicide prevention officer shall:

(a) coordinate all suicide prevention activities being conducted for both children and adults by all divisions within the department and coordinate with any suicide prevention activities that are conducted by other state agencies, including the office of the superintendent of public instruction, the department of corrections, the department of military affairs, the university system, and other stakeholders;

(b) develop a biennial suicide reduction plan in accordance with 53-21-1102 that addresses reducing suicides by Montanans of all ages, ethnic groups, and occupations;

(c) request from the prescription drug registry provided for in 37-7-1502 a list of all controlled substances dispensed to each person whose death was ruled to be a suicide;

(d) report to the legislature annually, in accordance with 5-11-210 and subsection (3) of this section, on the toxicology information submitted by county coroners and the prescription drug registry information regarding the medications prescribed to individuals whose manner of death was ruled to be a suicide; and

~~(c)~~*(e)* direct a statewide suicide prevention program with activities based on the best available evidence that include but are not limited to:

(i) conducting statewide communication campaigns aimed at normalizing the need for all Montanans to address their mental health and utilizing both paid and free media, including digital and social media, and including input

from government agencies, school representatives from elementary schools through higher education, mental health advocacy groups, veteran groups, and other relevant nonprofit organizations;

(ii) initiating, in partnership with Montana's tribes and tribal organizations, communication and training that is culturally appropriate and utilizes the modalities best suited for Indian country;

(iii) seeking opportunities for research that will improve understanding of suicide in Montana and provide increased suicide-related services;

(iv) training for medical professionals, military personnel, school personnel, social service providers, and the general public on recognizing the early warning signs of suicidality, depression, and other mental illnesses as well as actions, based on the best available evidence, to take during and after a crisis;

(v) identifying and using available resources, which may include providing grants to entities, including but not limited to tribes, tribal and urban health organizations, local governments, schools, health care providers, professional associations, and other nonprofit and community organizations, for development or expansion of evidence-based suicide prevention programs in accordance with the requirements of 53-21-1111;

(vi) building a multifaceted, lifespan approach to suicide prevention; and

(vii) obtaining, analyzing, and reporting program evaluation data, quality health outcomes, and suicide morbidity and mortality data, subject to existing confidentiality protections for the data.

(3) The suicide prevention officer may coordinate with appropriate department personnel in preparing the report required under subsection (2)(c). The report may contain only deidentified information."

Approved May 3, 2023

CHAPTER NO. 406

[SB 308]

AN ACT ESTABLISHING PATIENT VISITATION RIGHTS; PROVIDING THAT PATIENTS IN CARE FACILITIES HAVE A RIGHT TO A MINIMUM OF 2 HOURS OF IN-PERSON VISITATION PER DAY; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; AND REQUIRING CARE FACILITIES TO NOTIFY PATIENTS OF THEIR VISITATION RIGHTS.

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

Section 1. Short title. [Sections 1 through 4] may be cited as the "Patient Visitation Rights Act".

Section 2. Legislative intent. It is the intent of the legislature that:

(1) preservation of relationships between a patient and the patient's family members and associates is essential to the health and well-being of the patient; and

(2) a patient's need for visitation is a right that may not be superseded by other government objectives, except as provided in [section 4].

Section 3. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Care facility" means a hospice, hospital, or long-term care facility.

(2) "Hospice" has the meaning provided in 50-5-101.

(3) "Hospital" means a hospital or critical access hospital as those terms are defined in 50-5-101.

(4) "Long-term care facility" has the meaning provided in 50-5-101.

(5) "Patient" means an individual receiving services from a care facility.

Section 4. Patient visitation rights. (1) A patient has a right to a minimum of 2 hours of in-person visitation a day, which, subject to clinical and safety restrictions, may not be limited to one visitor a day, restricted, terminated, suspended, or waived by a care facility, the department of public health and human services, or the governor, including during a state of emergency or disaster declared by the governor.

(2) A care facility may not:

(a) require a patient to waive the visitation rights specified in this section; or

(b) subject to 49-2-312 and 49-2-313, impose a restriction on visitation based on a visitor's vaccination status or require a visitor to receive a vaccination.

(3) A care facility may, consistent with the precautions required to be taken by staff and other personnel:

(a) require a visitor to submit to health screenings necessary to prevent the spread of infectious diseases;

(b) restrict a visitor who does not pass health screening requirements;

(c) require a visitor to adhere to infection control procedures, including wearing personal protective equipment; and

(d) limit the number of persons in a room at one time pursuant to occupancy laws.

(4) A care facility shall post in a conspicuous place on the premises of the care facility informational materials developed by the department of public health and human services explaining the rights specified in this section.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as a new part in Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 1 through 4].

Approved May 3, 2023

CHAPTER NO. 407

[SB 314]

AN ACT REVISING LAWS RELATED TO CONSTRUCTION BONDS; PROVIDING THAT CERTAIN PEOPLE MAY FILE A BOND; PROVIDING LIMITS ON THE AMOUNT PAID BY A PRINCIPAL OR A PRINCIPAL'S SURETIES; AMENDING SECTION 71-3-551, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 71-3-551, MCA, is amended to read:

"**71-3-551. Substitution of bond allowed -- filing -- amount -- condition.** (1) *(a)* Whenever a construction lien has been filed ~~upon~~ *on* real property*,* ~~or any improvements on the real property, the contracting owner of any interest in the property, whether legal or beneficial~~ *entities as provided in subsection (1)(b)*, may, at any time before the lien claimant has commenced an action to foreclose the construction lien or within 30 days of the service of a complaint in an action to foreclose the construction lien, file a bond with the clerk of the district court in the county in which the property is located or, if the property is located in more than one county, with the clerk of the district court of any county in which a part of the property is located.

(b) The following persons may file a bond as provided in subsection (1)(a):

(i) the contracting owner of any interest in the property, whether legal or beneficial;

(ii) the original contractor as defined in 71-3-522; or

(iii) any subcontractor.

(2) The bond must be in an amount 1 1/2 times the amount of the construction lien and must be either in cash or written by a corporate surety company. If written by a corporate surety, the bond must be approved by a judge of the district court with which the bond is filed.

(3) The bond must be conditioned that if the construction lien claimant is finally adjudged to be entitled to recover ~~upon~~ *on* the claim ~~upon~~ *on* which the construction lien is based, the principal or the principal's sureties shall pay to the claimant the amount of the claimant's judgment, together with any interest, costs, attorney fees, and other sums that the claimant would be entitled to recover ~~upon~~ *on* the foreclosure of a construction lien against the principal. *However, the total amount paid by the principal or the principal's sureties may not exceed the amount of the bond provided for in subsection (2).*"

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

Approved May 3, 2023

CHAPTER NO. 408

[SB 339]

AN ACT ESTABLISHING REASONABLE CHILDHOOD INDEPENDENCE LAWS.

WHEREAS, we can mitigate the rise in childhood obesity and its lifelong negative impacts by encouraging a healthy, active lifestyle through outdoor play; and

WHEREAS, it is in the best interest of children to give them independence proportional to their intellectual, emotional, and physical maturity; and

WHEREAS, a child's parent or guardian is best poised to determine that child's intellectual, emotional, and physical maturity; and

WHEREAS, the Legislature wishes to protect and promote the right of parents to raise their own children.

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

Section 1. Reasonable childhood independence. A parent or guardian of a child does not violate a duty of care, protection, or support by permitting the child to engage in independent activities consistent with the child's intellectual, emotional, and physical maturity, including:

(1) traveling to and from school by walking, running, bicycling, public transit, or other means;

(2) traveling to and from nearby commercial or recreational facilities;

(3) engaging in outdoor play;

(4) remaining for less than 15 minutes in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold;

(5) remaining at home if the parent or guardian:

(a) returns home the same day on which the parent or guardian gives the child permission to remain at home;

(b) makes provisions for the child to contact the parent or guardian; and

(c) makes provisions for any reasonably foreseeable emergency.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 1].

Approved May 3, 2023

CHAPTER NO. 409

[SB 377]

AN ACT REVISING LAWS RELATED TO COURTS OF LIMITED JURISDICTION; PROVIDING A PROCEDURE TO REMOVE CERTAIN CASES FILED IN COURTS OF LIMITED JURISDICTION TO DISTRICT COURT; ALLOWING DISTRICT COURT JUDGES TO CONSOLIDATE JURISDICTION IN A DISTRICT COURT WHEN A CASE FILED IN A COURT OF LIMITED JURISDICTION AROSE OUT OF THE SAME TRANSACTION AS A CASE FILED IN DISTRICT COURT; REQUIRING A PARTY TO PAY DISTRICT COURT FEES ON REMOVAL; AMENDING SECTION 3-5-311, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Removal to district court. (1) A party desiring to remove a civil action from a justices' court, a municipal court, a city court, or the small claims division of a justices' court shall file in the district court of the judicial district in which the action is pending a notice of removal containing a short and plain statement of the grounds for removal with a copy of the summons and any complaints served on the party in the action.

(2) Civil actions or proceedings may be removed for the following reasons:

(a) the amount in controversy exceeds the $15,000 jurisdictional limit for justices' courts provided in 3-10-301 and applied to municipal courts in 3-6-103; or

(b) the civil action or proceeding filed in a justices' court, a municipal court, a city court, or the small claims division of a justices' court arose out of the same transaction or occurrence as a civil action or proceeding pending in district court.

(3) (a) Promptly after the filing of a notice of removal of a civil action or proceeding, the party shall give written notice to all parties and shall file a copy of the notice with the clerk of the district court in which the civil action or proceeding is to be tried.

(b) The notice of removal effectuates the removal, and the justices' court, municipal court, city court, or small claims division of a justices' court may not proceed any further unless the case is remanded.

(c) On receiving notice of removal, the justices' court, municipal court, city court, or small claims division of a justices' court shall transmit the pleadings and all papers in the action to the clerk of the district court immediately.

(4) If a party believes the removal is improper, the party shall file a motion to remand within 20 days of service of the notice of removal.

(5) A party who files a notice to remove a civil action to district court under this section shall pay all costs and fees of filing the papers in the district court pursuant to 25-1-201.

Section 2. Section 3-5-311, MCA, is amended to read:

"**3-5-311. Powers of judges at chambers.** (1) The judge of the district court may at chambers:

(a) issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original and remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in the judicial district;

(b) grant all orders and writs that are usually granted in the first instance upon an ex parte application and hear and dispose of those orders and writs;

(c) hear and determine any matter necessary in the exercise of the judge's powers in matters of probate or in any action or proceeding provided by law and any action in which all party defendants have made default;

(d) issue any process, make any order, and make and enter any default judgment.*; and*

(e) consolidate jurisdiction in district court over a civil action or proceeding filed in a justices' court, a municipal court, a city court, or the small claims division of a justices' court when the civil action or proceeding arose out of the same transaction or occurrence as a case pending in district court.

(2) When default judgments are entered in default cases, the judge shall forward to the clerk of the court of the county in which the action is pending the judgment, together with a minute entry of the proceedings. The clerk shall incorporate the judgment and minute entry into the minutes of the court.

(3) If a jury is necessary, the judge may open court and obtain a jury as in other cases."

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

Section 4. Applicability. [This act] applies to proceedings begun on or after [the effective date of this act].

Approved May 3, 2023

CHAPTER NO. 410

[SB 378]

AN ACT ALLOWING INTO EVIDENCE BUSINESS RECORDS KEPT IN THE ORDINARY COURSE OF BUSINESS THAT ARE ACCOMPANIED BY A SWORN AFFIDAVIT OR CERTIFICATION OF THE RECORDS CUSTODIAN OR OTHER QUALIFIED PERSON.

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

Section 1. Affidavit of business records. (1) The original or a copy of a business record that meets the requirements of Rule 803(6) of the Montana Rules of Evidence, as shown by a sworn affidavit or certification of the records custodian or other qualified person, is self-authenticating and does not need extrinsic evidence of authenticity in order to be admitted. An affidavit or certification must contain the following information:

(a) a statement showing that the person signing the affidavit or certification is the custodian or is otherwise qualified;

(b) a statement identifying the memorandum, report, record, or data compilation;

(c) a statement showing that the memorandum, report, record, or data compilation was made at or near the time of the acts, events, conditions, opinions, or diagnosis;

(d) a statement showing that the business records were kept in the course of a regularly conducted business activity and that it was the regular practice of that business activity to make the memorandum, report, record, or data compilation; and

(e) a statement indicating whether the documents are the original or are true and correct copies.

(2) A party intending to offer an affidavit or certification pursuant to this section must disclose the evidence to all other parties. The party offering the affidavit or certification must give all other parties written notice at least 21

days before the trial or hearing of the intent to offer the affidavit or certification and must make the business records and affidavit or certification available for inspection so that the other parties have a fair opportunity to challenge the admissibility of the evidence.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 26, chapter 1, and the provisions of Title 26, chapter 1, apply to [section 1].

Approved May 3, 2023

CHAPTER NO. 411

[SB 406]

AN ACT PROHIBITING A LOCAL GOVERNMENT FROM ADOPTING BUILDING CODES THAT ARE MORE STRINGENT THAN STATE BUILDING CODES; AND AMENDING SECTION 50-60-301, MCA.

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

Section 1. Section 50-60-301, MCA, is amended to read:

"**50-60-301. County, city, and town building codes authorized -- health care facility and public health center doors -- fee adjustment for model plans.** (1) The local legislative body of a county, city, or town may adopt a building code to apply to the county, city, or town by an ordinance or resolution, as appropriate:

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) (a) Except as provided in subsection (2)(b), a county, city, or town ~~building code may include only codes~~ *may not adopt or enforce a building code that is more stringent than the building code* adopted by the department *or as required by state law*.

(b) A county, city, or town may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable energy conservation standards contained in the state building code. New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the county, city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;

(ii) footings, foundations, and basements;

(iii) curbs;

(iv) gutters;

(v) landscaping;

(vi) utility connections;

(vii) street requirements;

(viii) sidewalks; and

(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the county, city, or town may impose the full examination fee permitted under 50-60-106."

Approved May 3, 2023

CHAPTER NO. 412

[SB 416]

AN ACT REVISING THE TIMELINE FOR CHANGES TO PRECINCT BOUNDARIES AFTER DISTRICTING AND APPORTIONMENT; AMENDING SECTION 13-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-3-102, MCA, is amended to read:

"**13-3-102. Change of precinct boundaries.** (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must *conform to 13-3-101 and* be accomplished within ~~45~~ *90* days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan must be consulted before adoption of the final plan."

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

Approved May 3, 2023

CHAPTER NO. 413

[SB 422]

AN ACT EXPANDING THE RIGHT TO TRY ACT; REMOVING THE RESTRICTION ON PATIENTS WHO ARE ELIGIBLE TO RECEIVE EXPERIMENTAL MEDICATIONS UNDER THE RIGHT TO TRY ACT; EXTENDING GOVERNMENTAL IMMUNITY; AND AMENDING SECTIONS 50-12-102, 50-12-103, 50-12-104, 50-12-105, 50-12-106, 50-12-107, 50-12-108, 50-12-109, AND 50-12-110, MCA.

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

Section 1. Section 50-12-102, MCA, is amended to read:

"**50-12-102. Definitions.** As used in this part, the following definitions apply:

~~(1) "Eligible patient" means an individual who meets the requirements of 50-12-104.~~

~~(2)~~*(1)* "Health care facility" has the meaning provided in 50-5-101.

~~(3)~~*(2)* "Health care provider" means any of the following individuals licensed pursuant to Title 37:

(a) a physician;

(b) an advanced practice registered nurse authorized by the board of nursing to prescribe medicine; and

(c) a physician assistant whose duties and delegation agreement allows the physician assistant to undertake the activities allowed under this part.

~~(4)~~*(3)* "Investigational drug, biological product, or device" means a drug, biological product, or device that:

(a) has successfully completed phase 1 of a clinical trial but has not yet been approved for general use by the United States food and drug administration; and

(b) remains under investigation in a United States food and drug administration-approved clinical trial.

~~(5) "Terminal illness" means a progressive disease or medical or surgical condition that:~~

~~(a) entails significant functional impairment;~~

~~(b) is not considered by a treating health care provider to be reversible even with administration of a treatment currently approved by the United States food and drug administration; and~~

~~(c) without life-sustaining procedures, will result in death.~~

~~(6)~~*(4)* "Written informed consent" means a written document that meets the requirements of 50-12-105."

Section 2. Section 50-12-103, MCA, is amended to read:

"**50-12-103. Availability of experimental drugs.** (1) A manufacturer of an investigational drug, biological product, or device may make the drug, product, or device available to ~~an eligible~~ *a* patient who has requested the drug, product, or device pursuant to this part.

(2) The manufacturer may:

(a) provide an investigational drug, biological product, or device to ~~an eligible~~ *a* patient without receiving compensation; or

(b) require ~~an eligible~~ *a* patient to pay the costs of or the costs associated with the manufacture of the investigational drug, biological product, or device.

(3) A manufacturer is not required to make an investigational drug, biological product, or device available to ~~an eligible~~ *a* patient."

Section 3. Section 50-12-104, MCA, is amended to read:

"**50-12-104. ~~Eligible patient --~~ *Patient* requirements.** A patient is eligible for treatment with an investigational drug, biological product, or device if the patient has:

~~(1) a terminal illness that is attested to by the patient's treating health care provider;~~

~~(2)~~*(1)* considered all other treatment options currently approved by the United States food and drug administration;

~~(3)~~*(2)* received a recommendation from the patient's treating health care provider for an investigational drug, biological product, or device;

~~(4)~~*(3)* given written informed consent for the use of the investigational drug, biological product, or device; and

~~(5)~~*(4)* documentation from the treating health care provider that the patient meets the requirements of this section."

Section 4. Section 50-12-105, MCA, is amended to read:

"**50-12-105. Written informed consent required.** (1) A patient or a patient's legal guardian must provide written informed consent for treatment with an investigational drug, biological product, or device.

(2) At a minimum, the written informed consent must include:

(a) an explanation of the currently approved products and treatments for the disease or condition from which the patient suffers;

(b) an attestation that the patient concurs with the treating health care provider in believing that all currently approved and conventionally recognized treatments are unlikely to ~~prolong~~ *improve* the patient's ~~life~~ *condition*;

(c) clear identification of the specific investigational drug, biological product, or device that the patient is seeking to use;

(d) a description of the potentially best and worst outcomes of using the investigational drug, biological product, or device and a realistic description of the most likely outcome;

(e) a statement that the patient's health plan or third-party administrator and provider are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product, or device unless they are specifically required to do so by law or contract;

(f) a statement that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment with the investigational drug, biological product, or device and that hospice care may be reinstated if the treatment ends and the patient meets hospice eligibility requirements; and

(g) a statement that the patient understands that the patient is liable for all expenses related to the use of the investigational drug, biological product, or device and that the liability for expenses extends to the patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product, or device states otherwise.

(3) The description of potential outcomes required under subsection (2)(d) must:

(a) include the possibility that new, unanticipated, different, or worse symptoms might result ~~and that the proposed treatment could hasten death~~; and

(b) be based on the treating health care provider's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition.

(4) The written informed consent must be:

(a) signed by:

(i) the patient;

(ii) a parent or legal guardian, if the patient is a minor; or

(iii) a legal guardian, if a guardian has been appointed pursuant to Title 72, chapter 5; and

(b) attested to by the patient's treating health care provider and a witness."

Section 5. Section 50-12-106, MCA, is amended to read:

"**50-12-106. Effect on insurance coverage and health care services.** (1) This part does not:

(a) expand the coverage required of an insurer under Title 33 or of the state or a local government under Title 2 or Title 53;

(b) affect the requirements for insurance coverage of routine patient costs for patients involved in approved cancer clinical trials pursuant to 2-18-704, 33-22-101, 33-22-153, 33-31-111, 33-35-306, 53-4-1005, or 53-6-101;

(c) require a health plan, third-party administrator, or governmental agency to pay costs associated with the use, care, or treatment of ~~an eligible~~ *a* patient with an investigational drug, biological product, or device; or

(d) require a health care facility to provide new or additional services.

(2) A health plan, third-party administrator, or governmental agency may provide coverage for the cost of an investigational drug, biological product, or device or the cost of services related to the use of an investigational drug, biological product, or device under this part.

(3) A health care facility may approve the use of an investigational drug, biological product, or device in the health care facility."

Section 6. Section 50-12-107, MCA, is amended to read:

"**50-12-107. Heirs not liable for payments.** If ~~an eligible~~ *a* patient dies while being treated with an investigational drug, biological product, or device, the patient's heirs are not liable for any outstanding debt related to the treatment or to a lack of insurance as a result of the treatment."

Section 7. Section 50-12-108, MCA, is amended to read:

"**50-12-108. Disciplinary action prohibited.** (1) A licensing board may not revoke, fail to renew, suspend, or take any action against a license issued under Title 37 to a health care provider based solely on the health care provider's recommendations to ~~an eligible~~ *a* patient regarding access to or treatment with an investigational drug, biological product, or device.

(2) The department of public health and human services may not take action against a health care provider's medicare certification based solely on the health care provider's recommendation that a patient have access to an investigational drug, biological product, or device."

Section 8. Section 50-12-109, MCA, is amended to read:

"**50-12-109. State action prohibited.** (1) An official, employee, or agent of the state of Montana may not block or attempt to block ~~an eligible~~ *a* patient's access to an investigational drug, biological product, or device.

(2) Counseling, advice, or a recommendation consistent with medical standards of care from a licensed health care provider is not a violation of this section."

Section 9. Section 50-12-110, MCA, is amended to read:

"**50-12-110. Immunity from suit.** A manufacturer of an investigational drug, biological product, or device, a pharmacist, a health care facility, a health care provider, or a person or entity involved in the care of ~~an eligible~~ *a* patient using an investigational drug, biological product, or device is immune from suit for any harm done to the ~~eligible~~ patient resulting from the investigational drug, biological product, or device if the manufacturer, pharmacist, health care facility, health care provider, or other person or entity is complying in good faith with the terms of this act and has exercised reasonable care."

Section 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. Two-thirds vote required. Because [section 9] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Approved May 3, 2023

CHAPTER NO. 414

[SB 423]

AN ACT GENERALLY REVISING LIABILITY RELATED TO FIREARM HOLD AGREEMENTS; LIMITING LIABILITY FOR AN INDIVIDUAL OR A PRIVATE ENTITY THAT RETURNS A FIREARM TO THE OWNER AT THE END OF A FIREARM HOLD AGREEMENT; AND PROVIDING A DEFINITION.

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

Section 1. Limitation of liability -- firearm hold agreement -- definition. (1) No cause of action may arise against an individual or a private entity for returning a firearm to the firearm owner at the termination of a firearm hold agreement.

(2) The immunity provided in subsection (1) does not apply to an action arising from a firearm hold agreement if the action was the result of otherwise unlawful conduct on the part of the individual or private entity holding a firearm for another individual.

(3) As used in this section, "firearm hold agreement" means a written or oral agreement between a firearm owner and another individual or a private entity in which the other individual or private entity takes physical possession of the firearm owner's lawfully possessed firearm at the owner's request, holds the firearm for an agreed period of time, and returns the firearm to the owner according to the terms of the agreement.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

Approved May 3, 2023

CHAPTER NO. 415

[SB 430]

AN ACT AMENDING THE TERM OF BANK DIRECTORS AND ALLOWING STAGGERED TERMS; AMENDING SECTIONS 32-1-301 AND 32-1-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 14. The articles of incorporation must set forth:

(a) the information required by 35-14-202(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 *initially* agreed *on* ~~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 35-14-202(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 35-14-401(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 2. Section 32-1-322, MCA, is amended to read:

"**32-1-322. Board of directors -- qualifications, tenure, and vacancies.** (1) The affairs of the bank must be managed by a board of directors consisting of ~~not less~~ *no fewer* than three persons. At least two-thirds of the board must be residents of Montana. Directors need not be shareholders of the corporation unless required by the articles of incorporation or bylaws. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) ~~The directors must be elected for a term of 1 year at the annual meeting of the stockholders.~~ *(a) As set forth in the bylaws of the institution, the directors may serve a term of multiple years and the terms may be staggered.*

(b) The annual meeting must be held before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation is not dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons elected shall hold their office until successors are elected and qualified.

(c) Every director shall take and subscribe an oath that the director will diligently and honestly perform the director's duty in the office and that the director will not knowingly violate or permit a violation of any of the provisions of this chapter. The oaths must be made in duplicate~~:.one~~ *One* copy must be transmitted to and filed with the department, and one copy must be kept on file in the office of the bank."

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

Approved May 3, 2023

CHAPTER NO. 416

[SB 464]

AN ACT REVISING LAWS RELATED TO EYEWITNESS LINEUPS; PROVIDING REQUIRED PROCEDURES AND REMEDIES FOR NONCOMPLIANCE; AND PROVIDING DEFINITIONS.

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

Section 1. Definitions. As used in [sections 1 and 2], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Eyewitness" means a person whose identification by sight of another person may be relevant in a criminal proceeding.

(2) "Live lineup" means a group of people displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.

(3) "Photographic lineup" means an array of photographs displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.

Section 2. Lineup procedure. A lineup conducted by a law enforcement agency of this state or any political subdivision must meet the following requirements:

(1) The peace officer who is the administrator of a live or photographic lineup must be unaware of which person in the lineup is the suspected perpetrator of the crime under investigation or, if that is not practicable, the administrator shall use a photographic lineup that prevents the administrator from seeing which member of the photographic lineup is being viewed by the eyewitness.

(2) Before the lineup is administered, the eyewitness must be instructed that the suspected perpetrator may or may not be in the lineup.

(3) Any person who is not the suspected perpetrator in the lineup must be substantially similar to the eyewitness's description of the suspected perpetrator.

(4) Immediately after an identification is made, the eyewitness shall provide a statement in the eyewitness's own words that articulates the level of the eyewitness's confidence in the identification.

(5) A failure to comply with any of the requirements of this section must be:

(a) considered by a court in adjudicating a motion to suppress eyewitness identification; and

(b) admissible in support of a claim of eyewitness misidentification if the evidence is otherwise admissible.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46, chapter 4, apply to [sections 1 and 2].

Approved May 3, 2023

CHAPTER NO. 417

[SB 480]

AN ACT REVISING LAWS RELATED TO STUDENT DATA TO INCREASE AWARENESS OF AND ACCESS TO POSTSECONDARY OPPORTUNITIES FOR STUDENTS; REMOVING THE REQUIREMENT THAT STUDENTS OPT IN TO SHARING INFORMATION WITH POSTSECONDARY INSTITUTIONS AND SCHOLARSHIP ORGANIZATIONS AS PART OF STATEWIDE ASSESSMENTS THAT ARE ALSO USED FOR COLLEGE ENTRANCE EXAMINATIONS; ALIGNING STATUTE WITH REQUIREMENTS OF THE FAMILY EDUCATION RIGHTS AND PRIVACY ACT; AND AMENDING SECTION 20-7-104, MCA.

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.

(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 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 subsections (9)(b) and (9)(c), 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. Except as provided in subsections (9)(b) and (9)(c), 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.

(c) 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*, unless the student's parent elects not to have the information shared*. A scholarship organization may use information released under this subsection (9)(c) only for the purpose of scholarship opportunities. The legislature intends that the release of information pursuant to this subsection (9)(c) is for the sole purpose of increasing *awareness of and* access to ~~higher education~~ *postsecondary* 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."

Approved May 3, 2023

CHAPTER NO. 418

[SB 483]

AN ACT GENERALLY REVISING ALTERNATIVE PROJECT DELIVERY LAWS; REVISING AND PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR AWARDING A COMPREHENSIVE AGREEMENT; PROVIDING STIPENDS TO QUALIFIED UNSUCCESSFUL RESPONDENTS TO A REQUEST FOR PROPOSAL; SETTING BASIC MINIMUM REQUIREMENTS FOR A SOLICITED PROPOSAL UNDER AN INNOVATIVE FINANCING DELIVERY OPTION; PROVIDING ADDITIONAL CRITERIA FOR SELECTING AND AWARDING INNOVATIVE FINANCING DELIVERY OPTIONS; PROVIDING FOR OTHER RESTRICTIONS ON COMPREHENSIVE AGREEMENTS; EXEMPTING COMPREHENSIVE AGREEMENTS FROM PROCUREMENT TIME LIMITS; AMENDING SECTIONS 18-2-501, 18-2-502, 18-2-503, AND 18-4-313, 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 18-2-501, MCA, is amended to read:

"**18-2-501. (Temporary) Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) (a) "Alternative project delivery contract" means a construction management contract, a general contractor construction management contract, ~~or~~ a design-build contract*, or a comprehensive agreement*.

(b) The term does not include a design-build contract awarded by the transportation commission under 60-2-111(3).

(2) "Best value" means a procurement in which the decision is based on the primary objective of meeting the specific goals and best interests of the state agency or governing body, including but not limited to qualifications, technical, design, pricing, financing viability, and schedule. This selection must be based on criteria that have been communicated to the proposers in the final request for proposals.

(3) "Comprehensive agreement" means an agreement setting forth the firm fixed price, duration, risk transfer, and all other commercial and technical terms to be adhered to with respect to an awarded eligible project utilizing innovative financing delivery with a private party.

~~(2)~~*(4)* "Construction management contract" means a contract in which the contractor acts as the public owner's construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

~~(3)~~*(5)* "Contractor" has the meaning provided in 18-4-123.

~~(4)~~*(6)* "Design-build contract" means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(7) "Eligible project" means any asset owned by a state agency or governing body, except for toll roads, toll bridges, and any broadband infrastructure projects.

~~(5)~~*(8)* "General contractor construction management contract" means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

~~(6)~~*(9)* "Governing body" means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11;

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23;

(c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners or trustees of a fire service area established pursuant to 7-33-2401; or

(d) the transportation commission established in 2-15-2502.

(10) "Innovative financing delivery" means a project delivery method whereby a state agency or a governing body procures an eligible project that includes private financing and any combination of design, build, operate, or maintain with a private party. In doing so, the state agency or governing body may pay for the development of the eligible project with public funds appropriated to that

eligible project, including fees to compensate the private party for the operation and maintenance of the project for the defined term.

~~(7)~~*(11)* "Project" means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

~~(8)~~*(12)* "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(13) "Request for proposals" means the final solicitation document requesting detailed proposals from short-listed, qualified proposers for evaluation and selection.

~~(9)~~*(14)* "State agency" has the meaning provided in 2-2-102. This definition does not include the department of transportation. (Terminates December 31, 2024--sec. 6, Ch. 54, L. 2017.)

18-2-501. (Effective January 1, 2025) Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Alternative project delivery contract" means a construction management contract, a general contractor construction management contract, ~~or~~ a design-build contract*, or a comprehensive agreement*.

(2) "Best value" means a procurement in which the decision is based on the primary objective of meeting the specific goals and best interests of the state agency or governing body, including but not limited to qualifications, technical, design, pricing, financing viability, and schedule. This selection must be based on criteria that have been communicated to the proposers in the final request for proposals.

(3) "Comprehensive agreement" means an agreement setting forth the firm fixed price, duration, risk transfer, and all other commercial and technical terms to be adhered to with respect to an awarded eligible project utilizing innovative financing delivery with a private party.

~~(2)~~*(4)* "Construction management contract" means a contract in which the contractor acts as the public owner's construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

~~(3)~~*(5)* "Contractor" has the meaning provided in 18-4-123.

~~(4)~~*(6)* "Design-build contract" means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(7) "Eligible project" means any asset owned by a state agency or governing body, except for toll roads, toll bridges, and any broadband infrastructure projects.

~~(5)~~*(8)* "General contractor construction management contract" means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

~~(6)~~*(9)* "Governing body" means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11;

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23; or

(c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners or trustees of a fire service area established pursuant to 7-33-2401.

(10) "Innovative financing delivery" means a project delivery method whereby a state agency or a governing body procures an eligible project that includes private financing and any combination of design, build, operate, or maintain with a private party. In doing so, the state agency or governing body may pay for the development of the eligible project with public funds appropriated to that eligible project, including fees to compensate the private party for the operation and maintenance of the project for the defined term.

~~(7)~~*(11)* "Project" means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

~~(8)~~*(12)* "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(13) "Request for proposals" means the final solicitation document requesting detailed proposals from short-listed, qualified proposers for evaluation and selection.

~~(9)~~*(14)* "State agency" has the meaning provided in 2-2-102, except that the department of transportation, provided for in 2-15-2501, is not considered a state agency."

Section 2. Section 18-2-502, MCA, is amended to read:

"**18-2-502. Alternative project delivery contract -- authority -- criteria.** (1) Subject to the provisions of this part, a state agency or a governing body may use an alternative project delivery contract. A state agency or governing body that uses an alternative project delivery contract shall:

(a) demonstrate that the state agency or the governing body has or will have knowledgeable staff or consultants who have the capacity to manage an alternative project delivery contract;

(b) clearly describe the manner in which:

(i) the alternative project delivery contract award process will be conducted; and

(ii) subcontractors and suppliers will be selected.

(2) Prior to awarding an alternative project delivery contract, the state agency or the governing body shall determine that the proposal meets at least two of the sets of criteria described in subsections (2)(a) through (2)(c) and the provisions of subsection (3). To make the determination, the state agency or the governing body shall make a detailed written finding that:

(a) the project has significant schedule ramifications and using the alternative project delivery contract is necessary to meet critical deadlines by shortening the duration of construction. Factors that the state agency or the governing body may consider in making its findings include, but are not limited to:

(i) operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early project completion;

(ii) demonstrable public benefits that result from less time for construction; or

(iii) less or a shorter duration of disruption to the public facility.

(b) by using an alternative project delivery contract, the design process will contribute to significant cost savings. Significant cost savings that may justify an alternative project delivery contract may derive from but are not limited to value engineering, building systems analysis, life cycle analysis, and construction planning.

(c) the project presents significant technical complexities that necessitate the use of an alternative delivery project contract.

(3) The state agency or the governing body shall make a detailed written finding that using an alternative project delivery contract will not:

(a) encourage favoritism or bias in awarding the contract; or

(b) substantially diminish competition for the contract.

(4) In addition to meeting the criteria set forth in subsections (1) through (3), a state agency or governing body that utilizes a comprehensive agreement must, for each project:

(a) demonstrate a public purpose; and

(b) demonstrate that the innovative financing delivery favors the innovative financing contract method over other available procurement and alternative project delivery methods."

Section 3. Section 18-2-503, MCA, is amended to read:

"**18-2-503. Alternative project delivery contract -- award criteria.** (1) (a) Whenever a state agency or a governing body determines, pursuant to 18-2-502, that an alternative project delivery contract is justifiable, the state agency or the governing body shall publish a request for qualifications.

(b) After evaluating the responses to the request for qualifications, a request for proposals must be sent to each respondent that meets the qualification criteria specified in the request for qualifications. The request for proposals must clearly describe the project, the state agency's or the governing body's needs with respect to the project, the requirements for submitting a proposal, criteria that will be used to evaluate proposals, and any other factors, including any weighting, that will be used to award the alternative project delivery contract.

(2) The state agency's or the governing body's decision to award an alternative project delivery contract must be based, at a minimum, on:

(a) the applicant's:

(i) history and experience with projects similar to the project under consideration;

(ii) financial health;

(iii) staff or workforce that is proposed to be committed to the project;

(iv) approach to the project; and

(v) project costs; and

(b) any additional criteria or factors that reflect the project's characteristics, complexities, or goals.

(3) Under any contract awarded pursuant to this part, architectural services must be performed by an architect, as defined in 37-65-102, and engineering services must be performed by a professional engineer, as defined in 37-67-101.

(4) At the conclusion of the selection process, the state agency or the governing body shall state and document in writing the reasons for selecting the contractor that was awarded the contract. The documentation must be provided to all applicants and to anyone else, upon request.

(5) A state agency or the governing body may compensate *qualified* unsuccessful ~~applicants~~ *respondents to the request for proposal with a designated stipend for the ownership of the work product in the unsuccessful proposal and partial reimbursement* for costs incurred in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably.

(6) When utilizing an innovative financing delivery option under this part, a state agency or the governing body shall follow the applicable procurement guidelines, including all applicable rules and law regarding competitive public procurement required under Montana law.

(7) When utilizing an innovative financing delivery option under this part, a state agency or the governing body shall, prior to issuing a request for proposals, establish an evaluation and selection process, including identifying the individuals who will perform the evaluation and selection. The state agency or the governing body shall endeavor to utilize individuals in the evaluation and selection process who have expertise in the subject matter.

(8) Awarding of a comprehensive agreement must be based on a best value analysis.

(9) At a minimum, a solicited proposal under an innovative financing delivery option must include the following:

(a) an analysis of the costs, benefits, and risk transfers resulting from the innovative financing delivery;

(b) a fixed fee price for the entirety of the comprehensive agreement, inclusive of design, construction, financing, operation, or maintenance, as applicable, and reflecting all risk transfer set forth in the terms of the final request for proposals;

(c) a detailed schedule and construction plans;

(d) a detailed financing plan and financial model for the lifetime of the comprehensive agreement, including any public funding or milestone payments during construction;

(e) a list of known utilities and rights-of-way that will be impacted by the project;

(f) a list of permits and governmental approvals required for the project; and

(g) a plan for utility relocation and right-of-way acquisition to the extent required by the final request for proposals.

(10) In addition to the provisions set forth in this part, comprehensive agreements may not:

(a) violate public construction contract provisions provided for in Title 18, chapter 2, part 4; or

(b) transfer ownership of a public asset to a private party.

(11) If operation and maintenance of an existing facility subject to an innovative financing delivery contract under this section is performed by employees covered by a collective bargaining agreement prior to becoming an eligible project for innovative financing delivery, the employees performing operation and maintenance of the completed facility must also be covered by a collective bargaining agreement."

Section 4. Section 18-4-313, MCA, is amended to read:

"**18-4-313. Contracts -- terms, extensions, and time limits.** (1) Except as provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) The contract term limit specified in subsection (1) does not apply to:

(a) a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;

(b) a department of revenue liquor store contract governed by the term specified in 16-2-101;

(c) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608;

(d) the department of administration state employee group benefit plans contracts governed by the term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana university system group benefit plan; and

(e) a contract for concessions or visitor services for a state park, state recreational area, state monument, or state historic site established under Title 23, chapter 1, part 1, that, with the consent of the state parks and recreation board, may be made for a period of not more than 20 years if a capital improvement is made, subject to subsection (5)*; or*

(f) a comprehensive agreement that uses an innovative financing delivery option as provided in 18-2-501 through 18-2-503.

(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

(5) A contract under subsection (2)(e) must require the concessionaire to provide a business plan offering a reasonable estimation that the cost of any capital improvement by the concessionaire will be repaid within the life of the contract or that where a proprietary interest is held, the concessionaire's interest in any capital improvement may be sold at appraised value to a subsequent concessionaire when the contract concludes."

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

Section 6. Termination. [This act] terminates July 1, 2033.

Approved May 3, 2023

CHAPTER NO. 419

[SB 492]

AN ACT REVISING LAWS RELATING TO THE RECOVERY OF COSTS IN AN ACTION FOR WHICH AN INSURER HAS BEEN FOUND TO NOT OWE A DUTY TO DEFEND THE INSURED; PROHIBITING AN INSURER FROM RECOVERING CERTAIN COSTS; PROVIDING AN EXCEPTION ALLOWING AN INSURER TO RECOVER CERTAIN COSTS; AND PROVIDING EXCEPTIONS TO APPLICABILITY.

WHEREAS, in Travelers Casualty and Surety Company v. Ribi Immunochem Research, 2005 MT 50, 326 Mont. 174, 108 P.3d 469, the Montana Supreme Court held that an insurer may recover defense costs when the insurer did not have a duty to defend any of the asserted claims; and

WHEREAS, in subsequent cases, including Horace Mann Insurance Company v. Hanke, 2013 MT 320, 372 Mont. 350, 312 P.3d 429, the Montana Supreme Court affirmed its decision to allow an insurer to recover defense costs when the insurer was determined to have no duty to defend an insured.

THEREFORE, this act generally prohibits insurers from recovering costs in an action for which the insurer has been found to not owe a duty to defend, but also provides an exception for actions in which certain conditions are met.

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

Section 1. Insurer costs prohibited -- duty to defend -- exception. (1) Except as provided in [section 2] and subsection (2) of this section, an insurer may not recover costs of defending an insured against claims asserted against the insured if the insurer is subsequently determined to not owe a duty to defend the insured.

(2) An insurer may recover costs of defending an insured against claims asserted against the insured when the insurer is subsequently determined to not owe a duty to defend the insured if:

(a) the insurance policy or contract contains language giving the insurer the right to seek reimbursement or recover those costs from the insured;

(b) the insurer provides written notice to the insured that the insurer may seek reimbursement or recovery of those costs from the insured at the time the insurer assumes the defense of the claim or when an insurer discovers facts that lead the insurer to question whether a claim is covered, whichever is later; and

(c) the insurer institutes an action to determine whether the insurer owes the insured a duty to defend within 120 days of determining whether a question exists as to whether a claim is covered under the policy.

(3) The insured has the right to recover, or seek reimbursement of, those costs from a third party pursuant to a contract or agreement or as otherwise provided by law, but only to the extent an insurer has recovered those costs.

(4) Nothing in this section compromises an insurer's right to seek recovery or reimbursement of costs under this section from any party other than the insured against whom the claim has been asserted.

Section 2. Exceptions to applicability. [Section 1] does not apply and an insurer may seek reimbursement from an insured for any amount paid by the insurer in defending any claim asserted against an insured if:

(1) the insured made fraudulent or material misrepresentations or concealed or omitted facts or information in the application for insurance, and the insurer, in good faith, would not have issued the policy or contract if the true facts had been made known to the insurer;

(2) the insured made fraudulent or material misrepresentations or concealed or omitted facts or information in the submission of the claim; or

(3) the insurance policy or contract is a professional liability insurance policy or contract.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 18, part 1, and the provisions of Title 33, chapter 18, part 1, apply to [sections 1 and 2].

Approved May 3, 2023

CHAPTER NO. 420

[SB 16]

AN ACT ALIGNING THE DISTRIBUTION PERIOD FOR A MONTANA FARM AND RANCH RISK MANAGEMENT ACCOUNT; AMENDING SECTION 15-30-3005, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-30-3005, MCA, is amended to read:

"**15-30-3005. (Temporary) Montana farm and ranch risk management account -- distributions.** (1) Distributions from the account may be used for any purpose the taxpayer chooses.

(2) Distributions from an account:

(a) are first attributable to income and then to other deposits; and

(b) must be considered to be made from deposits in the order in which the deposits were made, beginning with the earliest deposits. Income is considered to be deposited on the date the income is received by the account.

(3) All distributions from the account are taxable unless:

(a) the deposit, or that portion of the deposit to which the distribution is attributable, was not excluded from adjusted gross income for the tax year the deposit was made; or

(b) the distribution has already been taxed because it was considered a distribution as provided in subsection (4).

(4) (a) (i) Amounts that are not distributed within the ~~5-year~~ *3-year* eligibility period established in subsection (4)(a)(ii) are considered to be distributed to the taxpayer on the last day of the tax year in which the ~~fifth~~ *third* anniversary of the deposit occurs. The distribution is taxable, and a penalty equal to 10% of the tax due on the distributed amount is added to the tax as a penalty.

(ii) The ~~5-year~~ *3-year* eligibility period for withdrawal of a deposit without penalty is the due date, including extensions, for the filing of a tax return required by this chapter or, if the taxpayer files earlier, the date the taxpayer files the return for the tax year in which the ~~fifth~~ *third* anniversary of the deposit occurs.

(b) At the end of the first disqualification period after a period in which the taxpayer was engaged in eligible agricultural business, the balance of the account is considered to be distributed to the taxpayer and is taxable to the taxpayer. (Terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)

15-30-3005. (Temporary -- effective January 1, 2024) Montana farm and ranch risk management account -- distributions. (1) Distributions from the account may be used for any purpose the taxpayer chooses.

(2) Distributions from an account:

(a) are first attributable to income and then to other deposits; and

(b) must be considered to be made from deposits in the order in which the deposits were made, beginning with the earliest deposits. Income is considered to be deposited on the date the income is received by the account.

(3) All distributions from the account are taxable unless:

(a) the deposit, or that portion of the deposit to which the distribution is attributable, was not excluded from income in calculating Montana individual income taxes for the tax year the deposit was made; or

(b) the distribution has already been taxed because it was considered a distribution as provided in subsection (4).

(4) (a) (i) Amounts that are not distributed within the ~~5-year~~ *3-year* eligibility period established in subsection (4)(a)(ii) are considered to be distributed to the taxpayer on the last day of the tax year in which the ~~fifth~~ *third* anniversary of the deposit occurs. The distribution is taxable, and a penalty equal to 10% of the tax due on the distributed amount is added to the tax as a penalty.

(ii) The ~~5-year~~ *3-year* eligibility period for withdrawal of a deposit without penalty is the due date, including extensions, for the filing of a tax return required by this chapter or, if the taxpayer files earlier, the date the taxpayer files the return for the tax year in which the ~~fifth~~ *third* anniversary of the deposit occurs.

(b) At the end of the first disqualification period after a period in which the taxpayer was engaged in eligible agricultural business, the balance of the account is considered to be distributed to the taxpayer and is taxable to the taxpayer. (Terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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

Approved May 4, 2023

CHAPTER NO. 421

[SB 32]

AN ACT REVISING NATURAL GAS PIPELINE SAFETY PENALTIES; AMENDING SECTION 69-3-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 69-3-207, MCA, is amended to read:

"**69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations.** (1) A person violating any safety regulation or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, that applies to areas the commission has authority to enforce is subject to a fine *not to exceed $239,142 for each violation for each day* ~~of not less than $100 or more than $100,000~~. Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed ~~$1 million~~ *$2,391,412* for any related series of violations.

(2) In determining the amount of the penalty, the following must be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and other matters as justice may require.

(3) The fine must be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

(4) The commission may prescribe rules necessary to effectively administer this section."

Section 2. Effective date. [This act] is effective July 1, 2023.

Approved May 4, 2023

CHAPTER NO. 422

[SB 33]

AN ACT ELIMINATING CLASS C MOTOR CARRIER CLASSIFICATION AND REGULATIONS OF A CLASS C MOTOR CARRIER BY THE PUBLIC SERVICE COMMISSION; AMENDING SECTIONS 69-12-101, 69-12-201, 69-12-205, 69-12-301, 69-12-314, 69-12-321, 69-12-322, 69-12-323, 69-12-324, 69-12-404, 69-12-406, 69-12-407, 69-12-502, AND 69-12-611, MCA; REPEALING SECTIONS 69-12-302 AND 69-12-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 69-12-101, MCA, is amended to read:

"**69-12-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates

motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means a certificate of public convenience and necessity or a certificate of compliance issued under this chapter.

(3) "Certificate of compliance" means written authorization to operate issued by the commission for Class A or Class E motor carriers that transport passengers declaring that the motor carrier meets the fitness requirements of this chapter.

(4) "Certificate of public convenience and necessity" means a written authorization to operate issued by the commission for Class A motor carriers that transport property or persons and property~~, Class C motor carriers,~~ and Class D motor carriers declaring that the motor carrier service is required by the public convenience and necessity, as provided in this chapter.

(5) "Charter service" means a service used for the transportation of passengers by a motor carrier with rates not subject to approval by the commission if:

(a) the transportation of passengers is based on a single contract;

(b) the contract is entered into in advance of the transportation and does not result from a spontaneous, curbside agreement;

(c) the contract includes a single fixed charge and fares are not assessed per passenger;

(d) the passenger or group of passengers acquires exclusive use of the motor vehicle through the contract; and

(e) when applied to a group of passengers being transported, the group of passengers travels together to a specified destination.

(6) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(7) "Corporation" means a corporation, company, association, or joint-stock association.

(8) "Digital network" means any online-enabled application, software, website, or system offered or utilized by a transportation network carrier that enables the prearrangement of rides with transportation network carrier drivers.

(9) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(10) "Garbage" means ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is transported to a licensed transfer station, licensed landfill, licensed municipal solid waste incinerator, or licensed disposal well. The term does not include wastewater and waste tires.

(11) "Household goods" means any of the following:

(a) personal effects and property used or to be used in a dwelling when they are a part of the equipment or supply of the dwelling. The term does not include property moving from a factory or store unless the property is purchased by a householder for use in a dwelling and is transported at the request of the householder.

(b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when those items are a part of the stock, equipment, or supply of the stores, offices, museums, institutions, hospitals, or other establishments. The term does not include the stock-in-trade of an establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental

to moving of the establishment or a portion of the establishment from one location to another.

(c) articles, including objects of art, displays, and exhibitions that because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods and other similar articles.

(12) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. A motor carrier includes a transportation network carrier.

(13) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

(14) "Person" means an individual, firm, or partnership.

(15) "Personal vehicle" means a vehicle that is used by a transportation network carrier driver in connection with providing a prearranged ride and is:

(a) owned, leased, or otherwise authorized for use by the transportation network carrier driver; and

(b) not a taxicab, limousine, or for-hire vehicle.

(16) "Prearranged ride" means transportation provided by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network carrier, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a taxicab, limousine, or other for-hire vehicle pursuant to Title 69, chapter 12.

(17) "Public highway" means a public street, road, highway, or way in this state.

(18) "Railroad" means the movement of cars on rails, regardless of the motive power used.

(19) "Recyclable" means any material diverted from the solid waste stream that can be reused in the production of heat or energy or as raw material for new products and for which markets exist.

(20) "Transportation network carrier" means an entity that uses a digital network or software application service to connect passengers to transportation network carrier services provided by transportation network carrier drivers. A transportation network carrier may not be deemed to control, direct, or manage the personal vehicles or transportation network carrier drivers that connect to its digital network, except where agreed to by written contract.

(21) "Transportation network carrier driver" or "driver" means an individual who:

(a) receives connections to potential riders and related services from a transportation network carrier in exchange for payment of a fee to the transportation network carrier; and

(b) uses a personal vehicle to provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network carrier in return for compensation or payment of a fee.

(22) "Transportation network carrier rider" or "rider" means an individual or persons who use a transportation network carrier's digital network to connect with a transportation network carrier driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

(23) "Transportation network carrier services" means the transportation of a passenger between points chosen by the passenger and prearranged with

a transportation network carrier driver through the use of a transportation network carrier digital network or software application."

Section 2. Section 69-12-201, MCA, is amended to read:

"**69-12-201. Supervision and regulation of motor carriers.** (1) The commission has the power and authority and it is its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, and affairs of all motor carriers;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between motor carriers and the traveling and shipping public.

(2) The commission may, by general order or otherwise, prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

~~(3) The commission may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when rates are required for the best interests of public transportation.~~"

Section 3. Section 69-12-205, MCA, is amended to read:

"**69-12-205. Rules to reflect differences between carrier classes.** (1) Except as provided in subsection (3), rules related to schedules, service, tariffs, rates, facilities, accounts, and reports must recognize the differences between types of Class A, ~~Class C,~~ Class D, and Class E motor carriers, as defined in this chapter, and must be just, fair, and reasonable to the classes and types of motor carriers in relation to each other and to the public.

(2) (a) In establishing the tariff or rates to be charged by Class A motor carriers for the carrying of persons, the commission shall take into consideration the kind and character of service to be performed.

(b) In establishing the tariff or rates to be charged by Class A motor carriers for the carrying of property or persons and property, the commission shall take into consideration the public necessity of the service, the kind and character of service to be performed, and the effect of the tariff and rates on other transportation agencies, if any. The commission shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

(3) Except as provided in 69-12-341, a Class E motor carrier is not subject to commission rules related to schedules, tariffs, or rates."

Section 4. Section 69-12-301, MCA, is amended to read:

"**69-12-301. Classification of motor carriers.** (1) Motor carriers are divided into *three* ~~four~~ classes to be known as:

(a) Class A motor carriers;

~~(b) Class C motor carriers;~~

~~(c)~~*(b)* Class D motor carriers; and

~~(d)~~*(c)* Class E motor carriers.

(2) Class A motor carriers include all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

~~(3) Class C motor carriers include all motor carriers where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.~~

~~(4)~~*(3)* Class D motor carriers include all motor carriers operating motor vehicles transporting garbage.

~~(5)~~*(4)* Class E motor carriers include all transportation network carriers."

Section 5. Section 69-12-314, MCA, is amended to read:

"**69-12-314. Class D motor carrier certificate of public convenience and necessity.** (1) Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the commodities described in 69-12-301~~(4)~~*(3)*. Class D carriers, when applying for a new or additional certificate of public convenience and necessity, shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class D motor carrier certificate of public convenience or necessity or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation of garbage on a regular basis as part of the motor carrier's usual business operation."

Section 6. Section 69-12-321, MCA, is amended to read:

"**69-12-321. Hearing on application for motor carrier certificate.** (1) (a) Upon the filing of an application for a certificate by a Class A, ~~Class C,~~ Class D, or Class E motor carrier, ~~except a Class C motor carrier authorized to operate under the terms of a contract as provided in 69-12-324,~~ or upon the filing of a request for a transfer of authority, the commission shall provide notice of the application to any interested party.

(b) If a protest or a request for hearing is received, the commission shall fix a time and place for a hearing on the application. The hearing must be set for not later than 60 days after receipt of a protest or a hearing request. If a protest or a request for hearing is not received, the commission may act on the application without a hearing as prescribed by commission rules.

(c) A protest related to an application by a motor carrier pursuant to 69-12-311(1)(a) or by a Class E motor carrier is limited to a protest of the motor carrier's ability to meet the requirements of 69-12-323(5).

(2) A motor carrier referred to in 69-12-322, the department of transportation, the governing board or boards of any county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

~~(3) The contracting parties referred to in 69-12-313(4) shall appear and offer testimony in support of the applicant.~~

~~(4)~~*(3)* An application by a motor carrier pursuant to 69-12-311(1)(b)~~, by a Class C motor carrier,~~ or by a Class D motor carrier for a certificate of public convenience and necessity may be denied without a public hearing when the records of the commission demonstrate that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service. A hearing must be held if the applicant presents facts demonstrating that conditions over the route or in the territory and affecting transportation facilities have materially changed since the previous public investigation and finding and that public convenience and necessity now require the motor carrier operation."

Section 7. Section 69-12-322, MCA, is amended to read:

"**69-12-322. Notice of hearing.** (1) Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the commission shall ~~cause~~ *serve* a copy of the petition and notice of hearing ~~to be served~~ upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of the certificate and shall notify any other affected party at least 10 days before the date of hearing.

(2) Notice of the hearing must be published~~:~~

~~(a) in the legal advertising section of a local newspaper or newspapers determined by the commission to have a circulation sufficient to reach the consuming public in the area under consideration for applications for Class C authority; and~~

~~(b)~~ in appropriate newspapers determined by the commission to have sufficient statewide circulation in the case of applications for Class A authority."

Section 8. Section 69-12-323, MCA, is amended to read:

"**69-12-323. Decision on application.** (1) (a) Except as provided in subsection (1)(b), within 180 days from the date of the completed filing of an application, the commission shall issue its finding, order, or decision on the application and the evidence presented in support of the application at the time of the hearing.

(b) The commission may extend the time for making a decision to a date requested by the applicant.

(2) (a) If after a hearing on the request for a certificate of public convenience and necessity the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part of the service proposed, a certificate of public convenience and necessity must be issued. In determining whether a certificate of public convenience and necessity should be issued, the commission shall consider:

(i) the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency;

(ii) the likelihood of the proposed service being permanent and continuous throughout 12 months of the year; and

(iii) the effect that the proposed transportation service may have on other forms of transportation service that are essential and indispensable to the communities to be affected by the proposed transportation service or that might be affected by the proposed transportation service.

(b) For the purposes of issuing a certificate of public convenience and necessity to a Class D motor carrier, a determination of public convenience and necessity may include a consideration of competition.

(3) The commission may issue the certificate as requested in the application or in part and may attach terms and conditions to a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-311(1)(b)~~, a Class C motor carrier,~~ or a Class D motor carrier that in its judgment public convenience and necessity require.

(4) If a certificate is issued to a motor carrier as provided in this part, the certificate is in effect until terminated by the commission for cause or until terminated by the owner's failure to comply with 69-12-402.

(5) (a) In determining whether to approve a certificate of compliance for a motor carrier pursuant to 69-12-311(1)(a) or for a Class E motor carrier, the commission shall consider only whether the applicant meets the requirements of 69-12-415. The commission shall provide notice and may require a hearing in accordance with 69-12-321.

(b) An applicant seeking a certificate of compliance establishes a rebuttable presumption that it meets the requirements of 69-12-415 by demonstrating compliance with insurance, bonding, and security requirements established by the commission in accordance with 69-12-402."

Section 9. Section 69-12-324, MCA, is amended to read:

"**69-12-324. Special provisions when federal or state contract involved.** (1) A written contract presented to the commission is sufficient proof that a motor carrier pursuant to 69-12-311(1)(a) or a Class E motor carrier meets the requirements for a certificate of compliance or that a motor carrier

pursuant to 69-12-311(1)(b)~~, a Class C motor carrier,~~ or a Class D motor carrier meets the requirements for a certificate of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. Subject to the provisions of this section, a transportation movement is considered to be:

(a) the transportation for hire of persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department of the United States; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department of the state.

~~(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued without a public hearing.~~

~~(3)~~*(2)* The certificate issued pursuant to the terms of the United States government or state government contract is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the motor carrier is the motor carrier authorized to operate under the United States government or state government contract."

Section 10. Section 69-12-404, MCA, is amended to read:

"**69-12-404. Suspension of certificate by petition.** (1) (a) A motor carrier may petition the commission in writing to suspend its certificate for a period not to exceed 6 months. Only one additional 6-month suspension may be requested and granted.

(b) The suspension of a certificate of public convenience and necessity requested by a motor carrier pursuant to 69-12-311(1)(b)~~, by a Class C motor carrier,~~ or by a Class D motor carrier may be granted upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation.

(2) (a) The suspension of a certificate of compliance for a motor carrier pursuant to 69-12-311(1)(a) or for a Class E motor carrier as provided for in subsection (1) for a period of 12 consecutive months automatically terminates a certificate of compliance and requires a motor carrier pursuant to 69-12-311(1)(a) or a Class E motor carrier to reapply for a certificate of compliance.

(b) The suspension of a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-311(1)(b)~~, a Class C motor carrier,~~ or a Class D motor carrier as provided in subsection (1) for a period of 12 consecutive months establishes a prima facie presumption of absence of public convenience and necessity. If after notice and hearing the motor carrier pursuant to 69-12-311(1)(b)~~, the Class C motor carrier,~~ or the Class D motor carrier is unable to prove the existence of public convenience and necessity or existing demand for the transportation service, the commission may cancel a certificate of public convenience and necessity."

Section 11. Section 69-12-406, MCA, is amended to read:

"**69-12-406. Restriction on transportation of certain waste.** Except as provided in 69-12-324, a Class A~~, Class C,~~ or Class E motor carrier may not be authorized or permitted to transport garbage within the state. This restriction does not apply to recyclables."

Section 12. Section 69-12-407, MCA, is amended to read:

"**69-12-407. Records and reports.** (1) All records, books, accounts, and files of a Class A~~, Class C,~~ and Class D motor carrier in this state, as they relate to the business of transportation conducted by the motor carrier, must at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of Class A~~, Class C,~~ and Class D motor carriers. A motor carrier authorized to operate in accordance with the provisions of this chapter shall keep its records, books, and accounts according to the uniform system to the extent possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, a motor carrier authorized to engage in business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission.

(3) In addition to other reporting requirements, a Class D motor carrier shall provide sufficient information to the commission to show that the carrier is entitled to possess the Class D motor carrier certificate of public convenience and necessity under the requirements of 69-12-314.

(4) (a) To ensure safety with respect to transportation network carrier drivers affiliated with Class E motor carriers, the commission may conduct audits of a Class E motor carrier, but not more than twice annually.

(b) A Class E motor carrier shall, upon request from the commission, provide to the commission up to 1,000 unique identification numbers, each of which has been assigned by the motor carrier to an individual transportation network carrier driver affiliated with the motor carrier.

(c) The commission may request from the Class E motor carrier copies of records held by the motor carrier for up to 10 of the motor carrier's drivers, who may be identified in the request only by the driver's unique identification number.

(d) The Class E motor carrier shall comply with the request in an electronic format acceptable to the commission within 1 business day after receiving the request.

(e) The Class E motor carrier may redact the records provided to the commission under subsection (4)(d) to protect the individual privacy of the transportation network carrier's drivers, including information that could be used to identify a driver. Information that a Class E motor carrier may redact includes but is not limited to the transportation network carrier driver's name, address, and social security number, other than the last four digits.

(5) Except as required by Article II, section 9 or 10, of the Montana constitution, the records obtained by the commission under subsection (4) may not be publicly disclosed by the commission."

Section 13. Section 69-12-502, MCA, is amended to read:

"**69-12-502. Prohibition on deviation from rate schedules.** It is unlawful for any Class A motor carrier to charge, demand, receive, or collect any greater or less rate, charge, or fare than that fixed by the commission for the transportation service provided. ~~When maximum or minimum rates have been established for any service provided by any Class C motor carrier, it shall likewise be unlawful for the carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate or any less compensation or rate than that established by any applicable minimum rate.~~ It shall also be unlawful for any Class A motor carrier ~~or any Class C motor carrier subject to maximum or minimum rates~~ to refund or remit, in any manner or by any device, any portion of the rates, fares, and charges required to be collected under the schedule

of the Class A carrier on file with the commission ~~or under the maximum or minimum rates established by the commission for the Class C carrier~~."

Section 14. Section 69-12-611, MCA, is amended to read:

"**69-12-611. Leasing of power equipment.** (1) All Class A~~, Class C,~~ and Class D motor carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of power units must be in writing.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) a provision that the sole possession, responsibility, control, and direction of each vehicle resides with the lessee for the entire term of the lease;

(d) a provision that the lessee assumes full responsibility for all regulatory fees;

(e) the amount of compensation to be paid for use of the vehicle while under the lease and the method by which the compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease must be maintained in each leased vehicle at all times. Each leased power unit must display in a conspicuous place on both sides of the vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited."

Section 15. Repealer. The following sections of the Montana Code Annotated are repealed:

69-12-302. Class C contract requirements.

69-12-313. Class C motor carrier certificate of public necessity.

Section 16. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2023

CHAPTER NO. 423

[SB 37]

AN ACT GENERALLY REVISING LAWS RELATED TO LIVESTOCK; REVISING THE DEFINITION OF LIVESTOCK IN THE MEAT AND POULTRY INSPECTION ACT; AND AMENDING SECTION 81-9-217, MCA.

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

Section 1. 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.

(3) "Chief" means the chief meat inspector appointed as provided in 81-9-226.

(4) "Federal Food, Drug and Cosmetic Act" means 21 U.S.C. 301 through 392, as that law read on October 1, 1987.

(5) "Livestock" means cattle, buffalo, sheep, swine, goats, ~~rabbits,~~ horses, *and* mules or other equines, ~~and alternative livestock, as defined in 87-4-406,~~ whether alive or dead.

(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.

(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.

(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.

(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;

(e) if its container is so made, formed, or filled as to be misleading;

(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.

(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;

(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;

(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;

(j) if it is not subject to the provisions of subsection (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 (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 (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 May 4, 2023

CHAPTER NO. 424

[SB 54]

AN ACT REVISING THE REAPPRAISAL CYCLE FOR CERTAIN CENTRALLY ASSESSED PROPERTY; PROVIDING FOR A 2-YEAR REAPPRAISAL CYCLE FOR CERTAIN CENTRALLY ASSESSED PROPERTY; AMENDING SECTIONS 15-1-210, 15-1-402, 15-7-102, 15-7-111, 15-8-112, 15-15-102, 15-23-101, 15-23-103, AND 15-23-212, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-1-210, MCA, is amended to read:

"**15-1-210. Taxpayer right to know -- centrally assessed property.** (1) The department shall, in the course of valuing properties, post on its website 30 days prior to the issuance of current year assessment notices the capitalization rate or rates to be used by the department to determine the income indicators of value for centrally assessed property, including supporting information on capitalization studies. The supporting information must include the rationale for adding or deleting a company or property from those included in the study in the prior year.

(2) The department shall display a statement on its website that it will accept comments on the current year capitalization rates and information as provided in subsection (1) for 20 days after posting. The department shall consider the comments prior to issuing the current year assessment notices and shall post a response to each written comment within 20 days of the close of the comment period.

(3) The department shall include all underlying computations when providing a taxpayer with a determination of valuation.

(4) If the department changes its reliance on any indicator of value by more than 15% from the previous ~~year~~ *valuation*, the department shall provide the taxpayer with a written explanation of the rationale for the change when issuing an initial or final determination of valuation to a taxpayer.

(5) Nothing in this section may be construed as affecting an appraisal judgment.

(6) Inaccuracy or inadequacy of compliance with this section does not invalidate a determination of value or provide independent grounds for appeal."

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

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

(b) The protested payment must:

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

(ii) specify the grounds of protest; and

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

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

(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 Montana 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 15-10-109 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied

pursuant to 15-10-109 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, Montana 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) (A) If, after a final determination by the Montana tax appeal board or a court or after settlement of an appeal, the final assessed value of a property that is centrally assessed under 15-23-101 or an industrial property that is annually assessed by the department is less than 75% of the department's original assessed value, the governing body may demand that the state refund from the general fund the protested taxes equivalent to the difference between the final determined assessed value and 75% of the original assessed value.

(B) For industrial property under subsection (6)(d)(i)(A) in which the school district has elected to waive its right to its portion of protested taxes for that specific year, 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.

(C) The provisions of subsection (6)(d)(i)(A) do not apply to protested taxes for which the taxpayer protests the classification of the property.

(ii) 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).

(iii) 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). 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 15-10-109.

(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 3. Section 15-7-102, MCA, is amended to read:

"**15-7-102. Notice of classification, market value, and taxable value to owners -- appeals.** (1) (a) Except as provided in 15-7-138, the department shall mail or provide electronically to each owner or purchaser under contract for deed a notice that includes the land classification, market value, and taxable value of the land and improvements owned or being purchased. A notice must be mailed or, with property owner consent, provided electronically to the owner only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) The notice must include the following for the taxpayer's informational and informal classification and appraisal review purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the intangible land value assistance program provided for in 15-6-240, the property tax assistance programs provided for in Title 15, chapter 6, part 3, and the residential property tax credit for the elderly provided for in 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year;

(iii) the market value for the prior reappraisal cycle;

(iv) if the market value has increased by more than 10%, an explanation for the increase in valuation;

(v) a statement that the notice is not a tax bill; and

(vi) a taxpayer option to request an informal classification and appraisal review by checking a box on the notice and returning it to the department.

(c) When the department uses an appraisal method that values land and improvements as a unit, including the sales comparison approach for residential condominiums or the income approach for commercial property, the notice must contain a combined appraised value of land and improvements.

(d) Any misinformation provided in the information required by subsection (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each classification and appraisal to the correct owner or purchaser under contract for deed and mail or provide electronically the notice in written or electronic form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the

classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail or provide electronically the notice to a new owner or purchaser under contract for deed unless the department has received the realty transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed or provided electronically. The department shall notify the county tax appeal board of the date of the mailing or the date when the taxpayer is informed the information is available electronically.

(3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an informal classification and appraisal review by submitting an objection on written or electronic forms provided by the department for that purpose or by checking a box on the notice and returning it to the department in a manner prescribed by the department.

(i) For property other than class three property described in 15-6-133, class four property described in 15-6-134, ~~and~~ class ten property described in 15-6-143, *and centrally assessed property described in 15-23-101,* the objection must be submitted within 30 days from the date on the notice.

(ii) For class three property described in 15-6-133 and class four property described in 15-6-134, the objection may be made only once each valuation cycle. An objection must be made in writing or by checking a box on the notice within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for both years of the 2-year valuation cycle. An objection made more than 30 days from the date of the classification and appraisal notice will be applicable only for the second year of the 2-year valuation cycle. For an objection to apply to the second year of the valuation cycle, the taxpayer shall make the objection in writing or by checking a box on the notice no later than June 1 of the second year of the valuation cycle or, if a classification and appraisal notice is received in the second year of the valuation cycle, within 30 days from the date on the notice.

(iii) For class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle. An objection must be made in writing or by checking a box on the notice within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle. An objection made more than 30 days after the date of the classification and appraisal notice applies only for the subsequent remaining years of the 6-year reappraisal cycle. For an objection to apply to any subsequent year of the valuation cycle, the taxpayer shall make the objection in writing or by checking a box on the notice no later than June 1 of the year for which the value is being appealed or, if a classification and appraisal notice is received after the first year of the valuation cycle, within 30 days from the date on the notice.

(iv) For centrally assessed property described in 15-23-101(2)(a), the objection must be submitted within 20 days from the date on the notice. A taxpayer may submit an objection up to 10 days after this deadline on request to the department.

(v) (A) For centrally assessed property described in 15-23-101(2)(b) and (2)(c), an objection to the valuation or classification may be made only once each valuation cycle. An objection must be made in writing within the time

period specified in subsection (3)(a)(iv) for a reduction in the appraised value to be considered for both years of the 2-year valuation cycle. An objection made after the deadline specified in subsection (3)(a)(iv) will be applicable only for the second year of the 2-year valuation cycle. For an objection to apply to the second year of the valuation cycle, the taxpayer shall make the objection in writing no later than June 1 of the second year of the valuation cycle or, if a classification and appraisal notice is received in the second year of the valuation cycle, within the time period specified in subsection (3)(a)(iv).

(B) If a property owner has exhausted the right to object to a valuation, as provided for in subsection (3)(a)(v)(A), the property owner may ask the department to consider extenuating circumstances to adjust the value of property described in 15-23-101(2)(b) or (2)(c). Occurrences that may result in an adjustment to the value include but are not limited to extraordinary, unusual, or infrequent events that are material in nature and of a character different from the typical or customary business operations, that are not expected to recur frequently, and that are not normally considered in the evaluation of the operating results of a business, including bankruptcies, acquisitions, sales of assets, or mergers.

(b) If the objection relates to residential or commercial property and the objector agrees to the confidentiality requirements, the department shall provide to the objector, by posted mail or electronically, within 8 weeks of submission of the objection, the following information:

(i) the methodology and sources of data used by the department in the valuation of the property; and

(ii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.

(c) At the request of the objector or a representative of the objector, and only if the objector or representative signs a written or electronic confidentiality agreement, the department shall provide in written or electronic form:

(i) comparable sales data used by the department to value the property;

(ii) sales data used by the department to value residential property in the property taxpayer's market model area; and

(iii) if the cost approach was used by the department to value residential property, the documentation required in 15-8-111(3) regarding why the comparable sales approach was not reliable.

(d) For properties valued using the income approach as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.

(e) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was completed within 6 months of the valuation date pursuant to 15-8-201. If the department does not use the appraisal provided by the taxpayer in conducting the appeal, the department shall provide to the taxpayer the reason for not using the appraisal. The department shall give reasonable notice to the taxpayer of the time and place of the review.

(f) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination by mail or electronically. The department may not determine an appraised value that is higher than the value that was the subject of the

objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property or data available for the property that is kept by the department and used for calculating the appraised value. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection on written or electronic forms provided by the department or by checking a box on the notice; and

(b) the department has provided to the objector by mail or electronically its stated reason in writing for making the adjustment.

(5) A taxpayer's written objection or objection made by checking a box on the notice and supplemental information provided by a taxpayer that elects to check a box on the notice to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) ~~If~~ *Except as provided in 15-2-302 and 15-23-102, if* a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the Montana tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination. A county tax appeal board or the Montana tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the Montana tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 4. Section 15-7-111, MCA, is amended to read:

"**15-7-111. Periodic reappraisal of certain taxable property.** (1) *(a)* 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. *Except as provided in subsection (1)(b), all other property must be revalued annually.*

(b) Beginning January 1, 2024, all centrally assessed property must be revalued in the time periods provided for in 15-23-101(2).

(2) The department shall value newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1) and shall phase in the value of class ten property. The department shall adopt rules for determining the assessed valuation of new, remodeled, or reclassified property within the same class and the phased-in value of class ten property.

(3) The reappraisal of class three and class four property is complete on December 31 of every second year of the reappraisal cycle, and the reappraisal of class ten property is complete on December 31 of the sixth year of the

reappraisal cycle. The amount of the change in valuation from the base year for class ten property must be phased in each year at the rate of 16.66% of the change in valuation.

(4) During the second year of each reappraisal cycle, the department shall provide the revenue interim committee with a report, in accordance with 5-11-210, of tax rates for the upcoming reappraisal cycle that will result in taxable value neutrality for each property class.

(5) The department shall administer and supervise a program for the reappraisal of all taxable property within classes three and four. The department shall adopt a reappraisal plan by rule. The reappraisal plan adopted must provide that all class three and class four property in each county is revalued by January 1 of the second year of the reappraisal cycle, effective for January 1 of the following year, and each succeeding 2 years, and must provide that all class ten property in each county is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding 6 years. The resulting valuation changes for class ten property must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for class ten property each year is 16.66%.

(6) (a) In completing the appraisal or adjustments under subsection (5), the department shall, as provided in the reappraisal plan, conduct individual property inspections, building permit reviews, sales data verification reviews, and electronic data reviews. The department may adopt new technologies for recognizing changes to property.

(b) The department shall conduct a field inspection of a sufficient number of taxable properties to meet the requirements of subsection (5).

(7) (a) In each notice of reappraisal sent to a taxpayer, the department, with the support of the department of administration, shall provide to the taxpayer information on:

(i) the consumer price index adjusted for population and the average annual growth rate of Montana personal income; and

(ii) the estimated annualized change in property taxes levied over the previous 10 years by the state, county, and any incorporated cities or towns within the county and local school average mills by county.

(b) In every even-numbered year, the department shall publish in a newspaper of general circulation in each county the information required pursuant to subsection (7)(a) by the second Monday in October."

Section 5. Section 15-8-112, MCA, is amended to read:

"**15-8-112. Assessments to be made on classification and appraisal.** (1) The assessments of all lands, all city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department.

(2) The percentage basis of assessed value as provided for in chapter 6, part 1, is determined and assigned by the department when it makes its ~~annual~~ assessment of the property that it is required to assess centrally. The department shall apportion the assessments to the various counties, and its determination is final except as to the right of review in the Montana tax appeal board or the proper court."

Section 6. Section 15-15-102, MCA, is amended to read:

"**15-15-102. Application for reduction in valuation.** (1) The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board.

(2) The application for reduction may be obtained at the local appraisal office or from the county tax appeal board. The completed application must

be submitted to the county clerk and recorder. The date of receipt is the date stamped on the appeal form by the county clerk and recorder upon receipt of the form. The county tax appeal board is responsible for obtaining the applications from the county clerk and recorder.

(3) One application for reduction may be submitted during each valuation cycle. The application must be submitted within the time periods provided for in 15-7-102(3)(a).

(4) A taxpayer who receives an informal review by the department of revenue as provided in ~~15-7-102(3)~~ *15-7-102(3)(a)(i) through (3)(a)(iii)* may appeal the decision of the department of revenue to the county tax appeal board as provided in 15-7-102(6). The taxpayer may not file a subsequent application for reduction for the same property with the county tax appeal board during the same valuation cycle.

(5) If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made."

Section 7. Section 15-23-101, MCA, is amended to read:

"**15-23-101. Properties centrally assessed -- *valuation cycles.*** *(1)* The department shall centrally assess ~~each year~~:

~~(1)~~*(a)* the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

~~(2)~~*(b)* property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state including but not limited to:

~~(a)~~*(i)* telegraph, telephone, microwave, and electric power or transmission lines;

~~(b)~~*(ii)* rate-regulated natural gas transmission or oil transmission pipelines regulated by the public service commission or the federal energy regulatory commission;

~~(c)~~*(iii)* common carrier pipelines as defined in 69-13-101 or a pipeline carrier as defined in 49 U.S.C. 15102(2);

~~(d)~~*(iv)* natural gas distribution utilities;

~~(e)~~*(v)* the gas gathering facilities specified in 15-6-138(5);

~~(f)~~*(vi)* the dedicated communications infrastructure specified in 15-6-162(5);

~~(g)~~*(vii)* canals, ditches, flumes, or like properties; and

~~(h)~~*(viii)* if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

~~(3)~~*(c)* all property of scheduled airlines;

~~(4)~~*(d)* the net proceeds of mines, except bentonite mines;

~~(5)~~*(e)* the gross proceeds of coal mines; and

~~(6)~~*(f)* property described in subsections ~~(1) and (2)~~ *(1)(a) and (1)(b)* that is subject to the provisions of Title 15, chapter 24, part 12.

(2) Beginning January 1, 2024, the department shall centrally assess property as provided in this subsection.

(a) The department shall centrally assess annually the property described in subsections (1)(a), (1)(d), (1)(e), and (1)(f).

(b) The department shall centrally assess once every 2 years in odd-numbered years:

(i) telegraph, telephone, and microwave property described in subsection (1)(b)(i);

(ii) the allocations of centrally assessed telecommunication services companies; and

(iii) the property described in subsections (1)(b)(ii) (1)(b)(iii), (1)(b)(v), and (1)(b)(vi).

(c) The department shall centrally assess once every 2 years in even-numbered years:

(i) electric power or transmission lines property described in subsection (1)(b)(i);

(ii) property described in subsections (1)(b)(iv) and (1)(c); and

(ii) centrally assessed property not otherwise provided for in subsection (2)(a) or (2)(b)."

Section 8. Section 15-23-103, MCA, is amended to read:

"**15-23-103. Due date of reports and returns -- extensions.** (1) Except as provided in ~~subsection~~ *subsections* (2) *and (4)*, each report or return described in 15-23-301, 15-23-402, 15-23-502, 15-23-701, or 15-23-517 must be delivered to the department on or before March 31 each year.

(2) ~~Each~~ *Except as provided in subsection (4), each* report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-204, 15-23-212, 15-23-515, 15-23-516, or 15-23-518 must be delivered to the department before April 15 each year.

(4) Beginning January 1, 2024, the reports provided for in subsections (1) and (2) are only required to be delivered to the department in the calendar year the property is valued.

~~(4)~~*(5)* The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 9. Section 15-23-212, MCA, is amended to read:

"**15-23-212. Annual report.** Each railroad car company shall, annually and within the time requirements of 15-23-103(3) and ~~(4)~~ *(5)*, file with the department of revenue a report, signed and sworn to by one of its designated officers, that provides the following information as of the preceding December 31:

(1) the name and nature of the business of the company;

(2) the number, kind, acquisition cost, date of acquisition, and name of owner of its private railroad cars;

(3) the cost of additions and betterment, special equipment, racks, protective equipment, or any other modification or improvement to a car since acquisition;

(4) the total car miles traveled, loaded and unloaded, within the state during the calendar year preceding the date of filing;

(5) the total car miles traveled, loaded and unloaded, within and outside of the state during the calendar year preceding the date of filing;

(6) the average number of miles traveled by each class of car during the year;

(7) the description and location of real and personal property that is owned by the railroad car company and that is subject to taxation within this state; and

(8) any other facts the department may require."

Section 10. Transition. There is a transition year resulting from the change from an annual valuation cycle to a 2-year valuation cycle for certain

centrally assessed property. For the property provided for in 15-23-101(2)(b), the tax year 2023 values must be used for tax year 2024, with adjustment for any acquisitions or dispositions of property occurring between January 1, 2023, and December 31, 2023.

Section 11. Applicability. [This act] applies to property tax years beginning January 1, 2024.

Approved May 4, 2023

CHAPTER NO. 425

[SB 60]

AN ACT CREATING THE MONTANA STATE REFERENCE NETWORK ENTERPRISE FUND; AUTHORIZING THE MONTANA STATE LIBRARY TO ADMINISTER THE STATE REFERENCE NETWORK; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Administration of state reference network -- rulemaking. (1) The state library shall administer a state reference network to provide real-time geospatial location data from any location within the network.

(2) The state library may enter into contracts with other agencies and the private sector to carry out the provisions of the state reference network.

(3) The state library commission shall adopt rules necessary to carry out the provisions of [sections 1 and 2].

Section 2. Enterprise fund account for state reference network operations. (1) There is an account of the enterprise fund type, as described in 17-2-102(2)(a), to be known as the Montana state reference network account.

(2) (a) The account is to the credit of the state library and is to be used for operation of the state reference network. All fees collected by the state library for the use of the state reference network must be deposited in the account to be used for state reference network operations by the state library.

(b) Revenue collected from fees for the use of the state reference network pursuant to [section 1] must be deposited in the account.

(c) All interest and earnings on money deposited in the account must be credited to the account and used for state reference network operations by the state library.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 22, chapter 1, part 2, and the provisions of Title 22, chapter 1, part 2, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective July 1, 2023.

Approved May 4, 2023

CHAPTER NO. 426

[SB 71]

AN ACT REVISING THE STATE POLICY REGARDING MILK PRICE CONTROL; REMOVING POLICY STATEMENTS THAT NO LONGER REFLECT THE CURRENT STATE OF MILK PRODUCTION IN MONTANA; AMENDING SECTION 81-23-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 81-23-102, MCA, is amended to read:

"**81-23-102. Policy.** (1) ~~It is hereby declared~~ *The legislature declares* that:

(a) milk is a necessary article of food for human consumption;

(b) the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(c) the production, transportation, processing, storage, distribution, and sale of milk in the state of Montana is an industry affecting the public health and interest;

~~(d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk and products manufactured from milk, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;~~

~~(e)~~*(d)* health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;

~~(f)~~*(e)* it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk ~~and cream~~ and products manufactured from milk ~~and cream, to eliminate speculation and waste,~~ and to make the distribution of milk ~~and cream and products manufactured from milk and cream~~ *and products manufactured from milk* between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of those commodities;

~~(g) investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices within the industry which have in the past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;~~

(f) due to the nature of milk and the conditions surrounding the production and marketing of milk and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the powers of the state to provide constant supervision and regulation of the milk industry of the state;

~~(h)~~*(g)* milk is a perishable commodity that is easily contaminated with harmful bacteria, that cannot be stored for any great length of time, that must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

~~(i)~~*(h)* the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors ~~shall~~ produce and carry on hand a surplus of milk ~~in order~~ to guarantee and ensure to the consuming public an adequate supply at all times~~, which surplus must of necessity be converted into byproducts of milk at great expense and often at a loss to the producer and distributor~~;

~~(j)~~*(i)* this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine ~~and destroy~~ the milk industry~~, which causes producers to relax their diligence in complying with the provisions of the health authorities and often to produce milk of an inferior and unsanitary quality~~;

~~(k)~~*(j)* ~~investigation and experience have further shown that,~~ due to the nature of milk and the conditions surrounding its production and marketing, unless the producers are guaranteed and ensured a reasonable profit on milk, ~~both~~ the supply and quality of milk are affected to the detriment of and against the best interest of the citizens of this state ~~whose health and well-being are thereby vitally affected~~;

~~(l)~~*(k)* where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the ~~credit~~ *economic* status of both producers and distributors of milk is adversely affected ~~to a serious degree~~, thereby entailing loss and hardship ~~upon~~ *on* all within the community with whom these producers and distributors carry on business relations;

~~(m)~~*(l)* due to the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand has been found inadequate to protect the industry in this and other states and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

(2) The general purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the ~~exercise of the police~~ powers of the state."

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

Approved May 4, 2023

CHAPTER NO. 427

[SB 78]

AN ACT GENERALLY REVISING THE LIVESTOCK LOSS MITIGATION PROGRAM; REVISING THE DEFINITION OF GUARD ANIMAL; STANDARDIZING CLAIMANT INFORMATION; LIMITING PAYMENTS FOR REGISTERED LIVESTOCK; AND AMENDING SECTION 2-15-3112, MCA.

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

Section 1. Section 2-15-3112, MCA, is amended to read:

"**2-15-3112. Livestock loss mitigation program -- definitions.** The livestock loss board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, mountain lions, and grizzly bears, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves, mountain lions, and grizzly bears to cattle, swine, horses, mules, sheep, goats, llamas, and livestock guard ~~animals~~ *dogs* on state, federal, tribal, and private land.

(2) (a) Except as provided in subsection (2)(b), the board may reimburse confirmed and probable livestock losses at an amount not to exceed the fair market value of the livestock.

(b) The board may reimburse confirmed and probable livestock losses by paying a multiplier of the fair market value of the livestock based on a board-determined region.

(c) Before the board may issue a reimbursement for losses to a livestock producer eligible for coverage for losses, the department of revenue shall certify that the livestock producer has paid per capita fees as required by 15-24-921. Except for a tribal member or tribal entity participating in an authorized agreement pursuant to 2-15-3113, a livestock producer may not receive a reimbursement for losses until the producer has paid any delinquent per capita fees.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves, mountain lions, or grizzly bears may be responsible. The claim process must set out a clear and concise method for documenting and processing claims for reimbursement for livestock losses.

(5) Names, addresses, and other personally identifiable information of claimants must remain confidential and may not be released.

~~(5)~~*(6) (a)* A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board or a producer may consult with the U.S. department of agriculture wildlife services to complete the documentation.

(b) The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board.

(c) The board shall hold a hearing on ~~the~~ *an* appeal within 90 days of receipt of the written appeal, allowing the staff adjuster and the producer to present their positions. A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

~~(6)~~*(7)* As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf, mountain lion, or grizzly bear, including but not limited to the presence of bite marks indicative of the spacing of tooth punctures of wolves, mountain lions, or grizzly bears and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or other physical evidence that allows a reasonable inference of wolf, mountain lion, or grizzly bear predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, ~~the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed~~ *twice the average value of commercial sheep of the same age and sex*;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, ~~the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that~~

~~registered breed~~ *twice the average value of commercial cattle of the same age and sex*;

(vii) for other registered livestock, ~~the average price paid to the producer at public or private sales for animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price, then the increased value must be accepted as the fair market value for that animal.~~ *twice the average value of commercial-grade animals of the same breed, age, and sex; or*

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredating species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredating species may have been in the area when the depredation occurred."

Approved May 4, 2023

CHAPTER NO. 428

[SB 83]

AN ACT AUTHORIZING THE WESTERN MONTANA CONSERVATION COMMISSION ACT; ELIMINATING THE FLATHEAD BASIN COMMISSION AND THE UPPER COLUMBIA CONSERVATION COMMISSION; ELIMINATING LAWS RELATED TO THE FLATHEAD BASIN COMMISSION ACT; PROVIDING REQUIREMENTS FOR VOTING MEMBERS AND NONVOTING REPRESENTATIVES; ESTABLISHING REPORTING REQUIREMENTS; REPEALING SECTIONS 2-15-3310, 2-15-3330, 2-15-3331, 2-15-3332, 75-7-301, 75-7-302, 75-7-303, 75-7-304, 75-7-305, 75-7-307, 75-7-308, AND 80-7-1026, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Western Montana conservation commission. (1) There is a western Montana conservation commission consisting of 16 voting members. The commission is attached to the department of natural resources and conservation for administrative purposes only, as prescribed in 2-15-121.

(2) The governor shall appoint nine of the voting members who represent each of the following groups within western Montana:

(a) the hydropower utility industry;

(b) an electric cooperative;

(c) a private landowner who is a member of an irrigation district or a water users' association;

(d) a private citizen at large;

(e) private industry; and

(f) a director, officer, staff person, or member of a natural resource, conservation, or recreation organization, representing each of the following geographic areas:

(i) the Clark Fork river basin upstream from Missoula, including the Blackfoot river basin;

(ii) the Clark Fork river basin downstream from Missoula, including the Bitterroot river basin;

(iii) the Kootenai river basin; and

(iv) the Flathead river basin.

(3) Seven of the voting members shall represent the following groups within western Montana, including:

(a) two county commissioners, nominated and appointed by the Montana association of counties, including:

(i) one from a county with a population greater than 100,000; and

(ii) one from a county with a population less than 100,000;

(b) two conservation district representatives, nominated and appointed by the Montana association of conservation districts;

(c) two representatives of wastewater or storm water utilities, including:

(i) one from a municipality with a population greater than 20,000, nominated and appointed by the Montana league of cities and towns; and

(ii) one from a local water and sewer district, nominated and appointed by the Montana rural water association; and

(d) a representative of the Confederated Salish and Kootenai tribes' natural resource department, nominated and appointed by the Confederated Salish and Kootenai tribes tribal council;

(4) (a) The following officials or entities may appoint nonvoting representatives as follows:

(i) The speaker of the house and the president of the senate may each appoint two nonvoting representatives, one each from the majority party and from the minority party.

(ii) The directors of the department of environmental quality, department of natural resources and conservation, department of fish, wildlife, and parks, department of transportation, and department of commerce may each designate a nonvoting representative to the commission.

(iii) The president of the university of Montana, the director of the Montana bureau of mines and geology, and the Confederal Salish and Kootenai tribes tribal council may each designate a nonvoting representative to the commission.

(iv) The regional administrators of the environmental protection agency, U.S. department of agriculture, U.S. forest service, U.S. department of the interior, U.S. bureau of reclamation, U.S. geological survey, U.S. department of defense, and U.S. army corps of engineers and the administrator of the Bonneville power administration may each designate a nonvoting representative to the commission.

(b) The nonvoting representatives appointed subject to subsections (4)(a)(ii) through (4)(a)(iv) must possess sufficient knowledge and authority with their position to inform natural resource and community development decisions made within the commission's purpose and duties.

(5) The commissioners shall serve without pay. The voting members of the commission are entitled to reimbursement of travel, meals, and lodging expenses while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(6) Nonvoting commission representatives shall serve at the pleasure of the agency or organization that appoints them and may be removed with or without cause. Voting commission members shall serve staggered 4-year terms

beginning July 1, 2023. To implement staggered terms for voting members, the governor may specify a shorter length of term for initial voting members except that:

(a) the Flathead basin commission shall nominate two commissioners to the governor to serve until July 1, 2025, subject to subsections (2)(a) through (2)(f); and

(b) the upper Columbia conservation commission shall nominate two commissioners to the governor to serve until July 1, 2025, subject to subsections (2)(a) through (2)(f).

(7) A majority of the voting members of the commission constitutes a quorum of the commission.

(8) A vacancy on the commission must be filled in the same manner as a regular appointment. The appointed member shall serve for the remainder of the unexpired term.

(9) The commission shall select a presiding officer from among its members. The presiding officer may make motions and vote.

(10) A favorable vote of at least a majority of a quorum of voting members of the commission is required to adopt any commission motion, resolution, or other decision.

Section 2. Short title. [Sections 2 through 8] may be cited as the "Western Montana Conservation Commission Act".

Section 3. Purpose. The purpose of the western Montana conservation commission is to protect the existing high quality of western Montana's aquatic resources.

Section 4. Definitions. As used in [sections 2 through 8], the following definitions apply:

(1) "Aquatic resources" means all beneficial uses of water, including but not limited to water quality and water supply; recreational, scenic, and aesthetic values; and fish, wildlife, and other organisms, including the prevention and management of aquatic invasive species.

(2) "Commission" means the western Montana conservation commission established in [section 1].

(3) "Department" means the department of natural resources and conservation.

(4) "Western Montana" means all land and water areas west of the continental divide and within the Montana portion of the headwaters of the Columbia River basin.

Section 5. Duties of the commission. Duties of the commission are to:

(1) monitor the existing condition of natural resources in western Montana and coordinate development of a 5-year monitoring strategy. This strategy must be developed with input from all land and water management agencies within western Montana and identify proposed and needed monitoring that emphasizes but is not limited to the aquatic resources of western Montana.

(2) support, promote, and ensure the continuation of a comprehensive aquatic invasive species prevention program in western Montana to assure it is implemented effectively and efficiently to protect aquatic resources, local economies, and native species;

(3) encourage close cooperation and coordination between federal, state, provincial, tribal, and local resource managers for the establishment of consistent natural resource conservation practices, comprehensive monitoring, data collection, and interpretation;

(4) encourage and work for international coordination between the state of Montana and the province of British Columbia concerning the undertaking of natural resource monitoring and use of consistent standards for management

of natural resources throughout the region that may have influences on aquatic resources within western Montana;

(5) provide focused support and programming to the aquatic and natural resources of the Flathead River basin given its economic, cultural, and natural resource importance to the state of Montana;

(6) support economic development and use of western Montana's resources to their fullest extent without compromising the aquatic resources of western Montana;

(7) undertake, with the commission's discretion, investigations of resource utilization and hold public hearings concerning the condition of aquatic resources and other natural resources in western Montana;

(8) use the result of the duties performed pursuant to subsections (1) through (7) to create public-private partnerships that:

(a) result in projects to reduce point source water pollution and nonpoint source water pollutions, as those terms are defined in 75-5-103;

(b) prevent the spread of invasive species; and

(c) maintain, enhance, restore, expand, or benefit the aquatic resources of western Montana;

(9) implement in collaboration with the department policies pursuant to 85-1-101, through the administration of portions of the renewable resource grant and loan program under 85-1-601, within western Montana;

(10) implement in collaboration with the department the portion of state policy expressed in the reclamation and development grants program act under 90-2-1102 through administration of grants and loans within western Montana;

(11) submit to the governor, the environmental quality council, and the water policy interim committee, in accordance with 5-11-210, a biennial report that includes:

(a) a summary of information gathered in fulfillment of its duties under this section;

(b) information on monitoring activities within western Montana concerning the condition of the region's natural resources with particular emphasis on aquatic resources;

(c) the identification of land use, land development, and economic trends in western Montana;

(d) recommendations the commission considers appropriate for fulfillment of its duties and for the continued preservation of aquatic resources in western Montana; and

(e) an accounting of all money received and disbursed, by source and purpose, for the period since the last biennial report; and

(12) meet at least semiannually within western Montana at locations selected by the commission.

Section 6. Commission authority. (1) The commission may request the governor petition a state natural resource agency or that agency's rulemaking body to promulgate, amend, or repeal a rule addressing natural resource issues identified by the commission.

(2) The commission may petition a county, conservation district, or tribal council to promulgate, amend, or repeal local ordinances to resolve natural resource issues identified by the commission.

(3) The commission shall participate with the department in preparation of a state budget pursuant to Title 17, chapter 7, part 1, in order to identify disbursements necessary to complete the commission's purpose and duties.

(4) Subject to appropriation by the legislature, the commission may receive and expend disbursements, donations, gifts, grants, and other funds necessary to fulfill its purpose and duties.

Section 7. Special county government authority. The governing body of a county within western Montana may allocate to the commission a portion of any funds available from coal severance tax allocations or other sources that is designated for project or planning activities.

Section 8. Cooperation with other agencies and organizations. To fulfill its duties, the commission shall develop and maintain cooperative programs with federal, state, provincial, tribal, and local agencies or organizations that are responsible for natural resource management and monitoring in western Montana.

Section 9. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-3310. Upper Columbia conservation commission.
2-15-3330. Flathead basin commission -- membership -- compensation.
2-15-3331. Flathead basin commission.
2-15-3332. Flathead basin commission staff and office location.
75-7-301. Short title.
75-7-302. Purpose.
75-7-303. Definitions.
75-7-304. Duties of the commission.
75-7-305. Commission authority.
75-7-307. Special county government authority.
75-7-308. Cooperation with other agencies and organizations.
80-7-1026. Upper Columbia conservation commission -- purpose and duties.

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 33, and the provisions of Title 2, chapter 15, part 33, apply to [section 1].

(2) [Sections 2 through 8] are intended to be codified as a new chapter in Title 85, and the provisions of Title 85 apply to [sections 2 through 8].

Section 11. Effective date. [This act] is effective July 1, 2023.

Section 12. Termination. [This act] terminates June 30, 2029.

Approved May 4, 2023

CHAPTER NO. 429

[SB 150]

AN ACT PROHIBITING A DRUG TESTING REQUIREMENT IN A TREATMENT PLAN DURING A CHILD ABUSE OR NEGLECT PROCEEDING UNLESS THE COURT FINDS SUBSTANCE USE CONTRIBUTED TO THE REMOVAL OF THE CHILD FROM THE HOME OR CONTRIBUTES TO THE CHILD REMAINING OUT OF THE HOME; AND AMENDING SECTION 41-3-443, MCA.

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

Section 1. Section 41-3-443, MCA, is amended to read:

"**41-3-443. Treatment plan -- contents -- changes.** (1) The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or

(c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in temporary medical or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not include a drug testing requirement unless the court finds the substance use of the parent or guardian contributed to the removal of the child from the home or contributes to the child remaining out of the home.

~~(4)~~*(5)* A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

~~(5)~~*(6)* A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights.

~~(6)~~*(7)* A treatment plan must be ordered by no later than 30 days after the date of the dispositional hearing held pursuant to 41-3-438, except for good cause shown."

Approved May 4, 2023

CHAPTER NO. 430

[SB 165]

AN ACT ESTABLISHING A DUTY OF COOPERATION OF AN INSURED OR A THIRD-PARTY CLAIMANT TOWARD AN INSURER WHEN DEALING WITH CLAIMS AND SEEKING RECOVERY OF BENEFITS UNDER AN INSURANCE POLICY; PROVIDING THAT A BREACH OF THE DUTY MAY BE ASSERTED BY AN INSURER AS AN AFFIRMATIVE DEFENSE TO ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR COMMENCED BY AN INSURED OR THIRD-PARTY CLAIMANT THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; ALLOWING AN INSURER TO INTRODUCE EVIDENCE CONCERNING AN INSURED'S OR THIRD-PARTY CLAIMANT'S CONDUCT IN ANY CAUSE OF ACTION AGAINST AN INSURER UNDER SECTION 33-18-242, MCA, OR THAT ALLEGES THE INSURER'S BREACH OF CONTRACT OR THE INSURER'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is the public policy of this state that, when liability is reasonably clear and insurance coverage exists, the prompt, fair, and equitable settlement of insurance claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, this public policy benefits the citizens of this state because it promotes prompt, fair, and equitable settlements of insurance claims and reduces the nature, extent, and duration of costly litigation in the courts of this state; and

WHEREAS, this public policy is not promoted when an insured or a third-party claimant fails to act fairly toward an insurer and fails to cooperate when making, reporting, presenting, or delivering insurance claims or settlement demands to insurers; and

WHEREAS, it is the public policy of this state that both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to fairly investigate and evaluate insurance claims based on reasonably available and supporting documents, records, and information regarding the insurance claim.

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

Section 1. Insured and third-party claimant's duties -- affirmative defense. (1) An insured or a third-party claimant shall cooperate with an insurer with respect to an insurance claim or cause of action made or asserted against the insured, the insurer, or both, or reported to the insurer. The duty to cooperate includes, in addition to other duties specified in the insurance

policy, the duty to comply with the reasonable requests of the insurer in the investigation and handling of the insurance claim.

(2) An insured or a third-party claimant shall deliver claim information to the insurer to allow the insurer a fair and reasonable opportunity to investigate and evaluate each claim made against an insured, insurer, or both, or reported to the insurer.

(3) A breach of any of the duties of an insured or a third-party claimant set forth in this section does not create a separate or independent cause of action by an insurer against an insured or a third-party claimant, but the breach of a duty may be:

(a) considered as evidence regarding whether the insurer had an opportunity to conduct a reasonable investigation based on the reasonably available claim information and whether the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim; and

(b) asserted by an insurer as an affirmative defense to a cause of action commenced by an insured or a third-party claimant under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5), or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

(4) An insurer may introduce any evidence in a civil action regarding the actions, inactions, and other conduct of an insured or a third-party claimant in a civil action commenced by an insured or a third-party claimant with respect to a claim or cause of action under 33-18-242 for an insurer's alleged violation of 33-18-201(4), (5), or (6), or commenced by an insured or a third-party claimant that alleges the insurer's breach of contract or the insurer's breach of the implied covenant of good faith and fair dealing.

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

(a) (i) "Claim information" means documents, records, or information created, maintained, or stored in a media format that is reasonably available to an insured or a third-party claimant and that relates to, establishes, proves, or may tend to establish or prove:

(A) damages of any kind or nature relating to the claim or cause of action against the insured, insurer, or both; and

(B) the liability of the insured, insurer, or both to pay, satisfy, or otherwise compensate for the damages as provided in subsection (5)(a)(i)(A).

(ii) The term includes information that is reasonably available to an insured or a third-party claimant only if the claim information is in the possession of the insured or third-party claimant, or their representatives or attorneys, or if the claim information can be reasonably obtained by the insured or third-party claimant on request.

(b) "Insured" means an individual or entity insured under an insurance policy, against whom a third-party claimant is making, alleging, or pursuing an insurance claim or cause of action for damages, or an individual or entity making, alleging, or pursuing a claim or cause of action for which coverage may be provided by the insurance policy issued by the insurer to the individual or entity.

(c) "Third-party claimant" means a third party making, alleging, or pursuing an insurance claim or cause of action against an insured for damages, or against an insurer pursuant to 33-18-242. For purposes of this definition, the term also means an attorney or any other authorized representative acting for or on behalf of the third-party claimant or any assignee of the third-party claimant.

Section 2. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201*(1), (4), (5), (6), (9), or (13)*.

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

~~(4)~~*(5)* In an action under this section, the court or jury may award such damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of~~ 33-18-201*(1), (4), (5), (6), (9), or (13)*. Exemplary damages may also be assessed in accordance with 27-1-221.

~~(5)~~*(6)* An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

~~(6)~~*(7)* (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

~~(7)~~*(8)* The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

~~(8)~~*(9)* As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them."

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

Section 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 May 4, 2023

CHAPTER NO. 431

[SB 171]

AN ACT AUTHORIZING THE DEPARTMENT OF CORRECTIONS TO DISTRIBUTE AN INMATE'S TRUST ACCOUNT FUNDS AND TANGIBLE PERSONAL PROPERTY AFTER AN INMATE DIES WHILE INCARCERATED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Disposition of inmate trust account funds and tangible personal property. (1) A state inmate who is incarcerated in a state prison, as defined in 53-30-101, shall complete a department form designating a beneficiary by name. The beneficiary is entitled to the inmate's trust account funds and to the tangible personal property located on the state prison premises if the inmate dies while incarcerated at the state prison.

(2) The department shall develop a form conforming to the requirements of 72-2-522(2) to provide for the disposition of the inmate's trust account funds and tangible personal property. The form must conspicuously state that the inmate may modify or revoke the instrument at any time if the inmate makes a request to the warden or the warden's designee.

(3) (a) The department shall distribute a deceased inmate's trust account funds and tangible personal property to the beneficiary in accordance with the terms of the form and may not require other processes to distribute the funds.

(b) If the inmate's beneficiary or other person with priority under 37-19-904 refuses to take custody of the inmate's remains and the department pays for the cremation or burial, the costs of the disposition of the remains must be deducted from the inmate's trust account.

(c) The department may not deduct funds from the deceased inmate's trust account on or after the inmate's date of death to be applied to inmate obligations provided for in 53-1-107.

(d) The department may not distribute trust account funds until at least 45 days after the inmate's death to ensure that any accrued earnings or refunds that are due to the inmate are properly credited to the inmate's trust account before distribution.

(4) A department employee may not be named as beneficiary unless the employee is the inmate's next of kin.

(5) If the department cannot locate the inmate's designated beneficiary within a reasonable period of time after the inmate's death, the department shall transfer the inmate's trust account funds to the department of revenue in accordance with Title 70, chapter 9, part 8, and the tangible personal property items may be destroyed.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 1, part 1, and the provisions of Title 53, chapter 1, part 1, apply to [section 1].

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

Approved May 4, 2023

CHAPTER NO. 432

[SB 176]

AN ACT REVISING THE ALLOCATION OF LEGISLATORS APPOINTED TO LEGISLATIVE INTERIM COMMITTEES AND CERTAIN OTHER STATUTORY COMMITTEES TO REFLECT THE MAJORITY AND MINORITY COMPOSITION OF THE LEGISLATURE; REQUIRING A MEMBER OF THE MAJORITY PARTY TO CHAIR; REVISING BILL DRAFT REQUESTING; PROVIDING THAT INTERIM BUDGET COMMITTEE CHAIRS ARE EX OFFICIO NONVOTING MEMBERS OF THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 5-5-211, 5-5-215, 5-5-229, 5-5-234, 5-11-104, 5-12-202, 5-12-203, 5-13-202, 5-15-101, AND 5-16-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 subsection (5)(b) of this section, the composition of each interim committee must be as follows:

(i) four members of the house, ~~two~~ *three* from the majority party and ~~two~~ *one* from the minority party; and

(ii) four members of the senate, ~~two~~ *three* from the majority party and ~~two~~ *one* from the minority party.

(b) ~~If~~ *Subject to subsection (5)(c), 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) If additional members are appointed, members must be appointed in a manner that reflects the majority and minority composition of the legislature.

(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 2. Section 5-5-215, MCA, is amended to read:

"**5-5-215. Duties of interim committees.** (1) Each interim committee shall:

(a) review administrative rules within its jurisdiction;

(b) subject to 5-5-217(3), conduct interim studies as assigned;

(c) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

(d) review, if requested by any member of the interim committee, the statutorily established advisory councils and required reports of assigned

agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;

(e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules;

(f) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work; and

(g) review proposed ballot initiatives within the interim committee's subject area and vote to either support or not support the placement of the text of an initiative on the ballot in accordance with 13-27-202.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature. *An interim committee may by vote request four bill drafts on a partisan basis and an unlimited number of bill drafts on a bipartisan basis.*

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

(4) As used in this section:

(a) "bipartisan basis" means a vote in which members from more than one party vote to request a bill draft; and

(b) "partisan basis" means a vote in which members from only one party vote to request a bill draft."

Section 3. Section 5-5-229, MCA, is amended to read:

"**5-5-229. State-tribal relations committee.** *(1)* There is a state-tribal relations committee. ~~The~~ *Except as provided in subsection (2), the* committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214. The committee shall:

~~(1)~~*(a)* act as a liaison with tribal governments;

~~(2)~~*(b)* encourage state-tribal and local government-tribal cooperation;

~~(3)~~*(c)* conduct interim studies as assigned pursuant to 5-5-217; and

~~(4)~~*(d)* provide recommendations and a report, if one is written, in accordance with 5-5-216 for studies completed by the committee.

(2) The composition of the state-tribal relations committee must be as follows:

(a) six members of the house, three from the majority party and three from the minority party; and

(b) four members of the senate, two from the majority party and two from the minority party."

Section 4. Section 5-5-234, MCA, is amended to read:

"**5-5-234. Appointments.** (1) (a) Whenever a legislative appointing authority is required or authorized to appoint more than one legislative member of the majority party to a committee, subcommittee, or other statutorily recognized or authorized entity, the appointing authority may appoint a member of a party other than the majority party.

(b) Whenever a legislative appointing authority is required or authorized to appoint more than one legislative member of the minority party to a committee, subcommittee, other statutorily recognized or authorized entity, the appointing authority may, if requested by the minority leader, appoint a member of a party other than the minority party or majority party instead of a member of the minority party.

(2) (a) Whenever an elected state official, as defined in 5-7-102, is required or authorized to appoint more than one legislative member of the majority party to a statutorily recognized or authorized entity, the elected state official may, if requested by the senate president for a senate appointee or if requested

by the speaker of the house for a house appointee, appoint a member of a party other than the majority party instead of a member of the majority party.

(b) Whenever an elected state official, as defined in 5-7-102, is required or authorized to appoint more than one legislative member of the minority party to a statutorily recognized or authorized entity, the elected state official may, if requested by the senate minority leader for a senate appointee or if requested by the house minority leader for a house appointee, appoint a member of a party other than the minority party or majority party instead of a member of the minority party.

(3) If a vacancy occurs in the membership of a committee, subcommittee, or statutorily recognized or authorized entity because of the resignation or disqualification of a member appointed under the provisions of subsection (1) or (2), the appointing authority authorized or required to make an appointment to fill the vacancy is subject to the provisions of subsections (1) and (2).

(4) If an individual appointed under subsection (1) or (2) is not a member of either the majority party or minority party and resigns from or is otherwise disqualified from serving, the appointing authority shall fill the vacancy under the provisions of subsection (1) or (2) as if the appointment were an initial appointment, and the appointing authority is not required to fill the vacancy with an individual who is a member of the same party of which the individual whose resignation or disqualification caused the vacancy.

(5) The appointing authority for an interim committee provided for in Title 5 and composed of nine or more members shall appoint members in a manner that reflects the majority and minority composition of the legislature."

Section 5. Section 5-11-104, MCA, is amended to read:

"**5-11-104. Officers -- rules of procedure -- records.** *(1)* The legislative council shall organize immediately following appointment by electing one of its members as its presiding officer and by electing other officers from among its membership that the council considers appropriate. *The presiding officer may not be from the same chamber for more than a 2-year period from appointment. If a party has a majority of both chambers, the presiding officer must be from that party.*

(2) The council may adopt rules of procedure, make arrangements for its meetings, and carry out the purpose for which it is created. The council shall keep accurate records of its activities and proceedings."

Section 6. Section 5-12-202, MCA, is amended to read:

"**5-12-202. Appointment of members.** (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the presiding officer;

(b) subject to 5-5-234, two members of the senate appointed at large by the committee on committees;

(c) four members of the house of representatives appropriations committee appointed by the presiding officer; and

(d) subject to 5-5-234, two members of the house appointed at large by the speaker.

(2) These members must be appointed before the end of each legislative session. Three members of each house, two committee members and one at-large member, must be from the majority party and the other three members appointed from that house must be from the minority party.

(3) Presiding officers of interim budget committees are ex officio nonvoting members of the legislative finance committee."

Section 7. Section 5-12-203, MCA, is amended to read:

"**5-12-203. Term -- officers -- compensation.** (1) Appointments are for 2 years, and a member of the committee shall serve until the member's term of office as a legislator ends or until a successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as presiding officer and other officers that it considers necessary. *If a party has a majority of both chambers, the presiding officer must be from that party.*

(3) Members of the committee are entitled to receive compensation and expenses as provided in 5-2-302."

Section 8. Section 5-13-202, MCA, is amended to read:

"**5-13-202. Appointment and term of members -- officers -- vacancies.** (1) The legislative audit committee consists of six members of the senate and six members of the house of representatives appointed before the end of each regular session in the same manner as standing committees of the respective houses are appointed. Subject to 5-5-234, three of the appointees of each house must be members of the majority party and three of the appointees of each house must be members of the minority party.

(2) A member of the committee shall serve until the member's term of office as a legislator ends or until a successor is appointed, whichever occurs first.

(3) The committee shall elect one of its members as presiding officer and other officers as it considers necessary. *If a party has a majority of both chambers, the presiding officer must be from that party.*

(4) A vacancy on the committee occurring when the legislature is not in session must be filled by the selection of a member of the legislature by the remaining members of the committee. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under subsection (1)."

Section 9. Section 5-15-101, MCA, is amended to read:

"**5-15-101. Legislative consumer committee -- appointment and composition.** (1) There is a legislative consumer committee consisting of*:*

(a) ~~two~~ *three* members of the senate*, two from the majority party and one from the minority party;* and

(b) ~~two~~ *three* members of the house of representatives*, two from the majority party and one from the minority party*.

(2) Members shall be appointed in the same manner as standing committees of the respective houses before the 60th legislative day of the legislative session following the expiration of the terms of the members of the committee. No more than one of the appointees of each house may be members of the same political party."

Section 10. Section 5-16-101, MCA, is amended to read:

"**5-16-101. Appointment and composition.** The environmental quality council consists of 17 members as follows:

(1) the governor or the governor's designated representative is an ex officio member of the council and shall participate in council meetings as a nonvoting member;

(2) six members of the senate and six members of the house of representatives appointed before the 50th legislative day in the same manner as standing committees of the respective houses are appointed. ~~Subject to 5-5-234, three~~ *Four* of the appointees of each house must be members of the majority party and ~~three~~ *two* appointees of each house must be members of the minority party.

(3) four members of the general public. Two public members must be appointed by the speaker of the house with the consent of the house minority leader, and two must be appointed by the president of the senate with the consent of the senate minority leader."

Section 11. Effective date. [This act] is effective on passage and approval.

Approved May 4, 2023

CHAPTER NO. 433

[SB 201]

AN ACT REVISING JUDICIAL RECUSAL LAWS WHEN A LAWYER OR PARTY TO A PROCEEDING HAS MADE CAMPAIGN CONTRIBUTIONS; PROVIDING DEFINITIONS; REPEALING SECTION 3-1-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Judicial conflict of interest -- recusal -- definitions. (1) Any party to a proceeding may request that the judicial officer assigned to the proceeding be recused if an opposing party or lawyer or a lawyer's law firm representing an opposing party meets the criteria in subsection (1)(a) or (1)(b):

(a) the judicial officer has received one or more combined contributions totaling the maximum amount allowable under 13-37-216 from a lawyer or party to the proceeding in an election that was held within the previous 6 years; or

(b) a lawyer, the lawyer's law firm, or party to the proceeding has made one or more contributions directly or indirectly to a political committee or other entity that engaged in independent expenditures that supported the judicial officer or opposed the judicial officer's opponent in an election that was held within the previous 6 years if the total combined amount of the contributions exceeds $10,000 for a candidate for a supreme court office or $5,000 for a candidate for any other judicial office.

(2) The moving party shall provide sufficient facts to demonstrate that the criteria in subsection (1) have been met.

(3) Upon receipt of the motion and the information required by subsection (2), the judicial officer shall recuse.

(4) For the purposes of this section:

(a) "contribution" has the meaning provided in 13-1-101; and

(b) "judicial officer" has the meaning provided in 1-1-202.

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

3-1-609. Judicial conflict of interest -- recusal -- definition.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 6, and the provisions of Title 3, chapter 1, part 6, apply to [section 1].

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

Section 5. Applicability. [This act] applies to contributions made on or after [the effective date of this act] and to actions commenced on or after [the effective date of this act].

Approved May 4, 2023

CHAPTER NO. 434

[SB 203]

AN ACT REVISING THE LAW FOR THE TRANSFER OF CRITICAL INFRASTRUCTURE AND AGRICULTURAL LAND; PROHIBITING THE SALE, LEASE, OR RENTAL OF CRITICAL INFRASTRUCTURE OR LAND USED FOR AGRICULTURAL PRODUCTION TO FOREIGN ADVERSARIES OR CORPORATIONS DOMICILED IN FOREIGN ADVERSARY NATIONS; AND PROVIDING DEFINITIONS.

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

Section 1. Prohibited transactions with foreign adversaries. (1) A foreign adversary may not:

(a) buy, lease, or rent critical infrastructure, land used for agricultural production, or real property or a residence that has a direct line of sight to any part of a military installation from an entity provided for in this title; or

(b) enter into a contract with an entity provided for in this title that results in the foreign adversary's control of agricultural production land or critical infrastructure in this state.

(2) A foreign adversary that violates this section shall divest from its interest in critical infrastructure or land used for agricultural production within 1 year, after which time the property may be sold at public auction by the county sheriff of any county where the critical infrastructure or land used for agricultural production is located.

(3) The attorney general or county where the critical infrastructure or land used for agricultural production is located may bring a suit to enforce this section.

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

(a) "Agricultural production":

(i) has the meaning provided in 82-10-502; and

(ii) includes homesteads with one or more acres of improvements.

(b) "Critical infrastructure" has the meaning provided in 82-1-601.

(c) "Foreign adversary" means any foreign government or foreign nongovernment person determined by the secretary of commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or the security and safety of the people of the United States for the purposes of sections (3)(a) and (3)(b) of Executive Order No. 13873 of May 15, 2019, or a corporation, however constituted, domiciled or headquartered in a nation determined to be a foreign adversary, or a corporation over which a foreign adversary has a controlling interest.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [section 1].

Approved May 4, 2023

CHAPTER NO. 435

[SB 208]

AN ACT PROHIBITING LOCAL GOVERNMENTS FROM BANNING OR LIMITING ENERGY CHOICES; PROVIDING A DEFINITION; AMENDING

SECTIONS 7-1-111 AND 50-60-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Energy source restrictions -- prohibition. (1) Notwithstanding any other provision of law, a local government may not adopt or enforce an ordinance, resolution, or policy that prohibits or impedes, or has the effect of prohibiting or impeding, the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider.

(2) For the purposes of this section, "local government" includes a county, a consolidated government, an incorporated city or town, or a special district.

Section 2. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); ~~or~~

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1)~~.~~*; or*

(26) any power to prohibit or impede the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider."

Section 3. Section 50-60-203, MCA, is amended to read:

"**50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.

(b) Rules concerning the conservation of energy must conform to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, except as provided in ~~subsection~~ *subsections* (5) *and (6)*, and may adopt rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances.

(5) The department may not include in the state building code a requirement for the installation of a fire sprinkler system in a single-family dwelling or a residential building that contains no more than two dwelling units.

(6) The department may not include in the state building code a prohibition of or limitation on the use of electric, natural gas, propane, or other energy source.

~~(6)~~*(7)* (a) The department shall, by rule, adopt by reference the most recently published edition of the national fire protection association's publication NFPA 99C for the installation of medical gas piping systems. The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of medical gas piping systems.

(b) A state, county, city, or town building code compliance officer shall, as part of any inspection, request proof of a medical gas piping installation endorsement from any person who is required to hold an endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board of plumbers."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [section 1].

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

Approved May 4, 2023

CHAPTER NO. 436

[SB 216]

AN ACT REVISING LAWS RELATING TO CIVIL LAWSUITS INVOLVING PRODUCTS; REVISING LAWS PERTAINING TO STRICT LIABILITY OR CERTAIN BREACH OF WARRANTY LAWS TO ALLOW A DEFENDANT TO ASSERT A DEFENSE THAT THE DAMAGES WERE CAUSED BY A PERSON WITH WHOM THE CLAIMANT HAS SETTLED OR RELEASED FROM LIABILITY; REVISING PRODUCT LIABILITY LAWS TO ALLOW CERTAIN DEFENSES; PROVIDING DEFINITIONS; ALLOWING CONTRIBUTORY

NEGLIGENCE AS A DEFENSE IN A PRODUCT LIABILITY LAWSUIT; ALLOWING THE SELLER OF A PRODUCT TO ASSERT CERTAIN DEFENSES; PROVIDING STANDARDS OF PROOF FOR CLAIMANTS IN CERTAIN PRODUCT ACTIONS; AMENDING SECTIONS 27-1-703 AND 27-1-719, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 27-1-703, MCA, is amended to read:

"**27-1-703. (Temporary) Multiple defendants -- determination of liability.** (1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, *strict liability as provided in 27-1-719(1), or on a breach of warranty, including but not limited to the provisions of 30-2-314, 30-2-315, or 30-11-215,* a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of

persons released from liability by the claimant or with whom the claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes of a prior or subsequent action involving that person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

(e) A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person whom the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person whom the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

(f) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

(iii) giving the claimant a reasonable opportunity to defend against the defense.

(g) If a defendant alleges that a settled or released person is at fault in the matter, the defendant shall notify each person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each settled or released person at the person's last-known address by certified mail, return receipt requested. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-703. (Effective on occurrence of contingency) Multiple defendants -- determination of liability. Each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of."

Section 2. Section 27-1-719, MCA, is amended to read:

"**27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer.** ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~*(1)* A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~*(2)* The provisions of subsection ~~(2)~~ *(1)* apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~*(3)* (a) Subsection ~~(2)~~ *(1)* does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~*(1)*(b) does not apply to a claim for relief based ~~upon~~ *on* improper product design.

~~(5)~~*(4)* ~~Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the *claimant,* user*,* or consumer, the legal representative of the *claimant,* user*,* or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ *the claimant,* user*,* or consumer of the product discovered the defect or the defect was open and obvious and the *claimant,* user*,* or consumer unreasonably made use of the product and was injured by it.*;*

(b) ~~The~~ *the* product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. *Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.*

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~*(5)* The affirmative defenses referred to in subsection ~~(5)~~ *(4)* mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

(c) the product at issue:

(i) was a drug or medical device;

(ii) was approved for safety and efficacy by the United States food and drug administration;

(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997; subsection ~~(4)~~*(3)*(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. ~~(1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~

~~(2)~~*(1)* A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

~~(3)~~*(2)* The provisions of subsection ~~(2)~~ *(1)* apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

~~(4)~~*(3)* (a) Subsection ~~(2)~~ *(1)* does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection ~~(2)~~*(1)*(b) does not apply to a claim for relief based upon improper product design.

~~(5)~~*(4)* ~~Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product.~~ A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the *claimant,* user, or consumer, the legal representative of the *claimant,* user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) ~~The~~ *the claimant,* user, or consumer of the product discovered the defect or the defect was open and obvious and the *claimant,* user, or consumer unreasonably made use of the product and was injured by it.*;*

(b) ~~The~~ *the* product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. *Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.*

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

~~(6)~~*(5)* The affirmative defenses referred to in subsection ~~(5)~~ *(4)* mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the

legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

(c) the product at issue:

(i) was a drug or medical device;

(ii) was approved for safety and efficacy by the United States food and drug administration;

(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation, or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing,

packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. (Subsection ~~(4)~~*(3)*(a) terminates January 1, 2031--sec. 15, Ch. 2, L. 2021.)"

Section 3. 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 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to claims that accrue on or after [the effective date of this act].

Approved May 4, 2023

CHAPTER NO. 437

[SB 217]

AN ACT PROVIDING DEPOSITS IN THE RANGELAND IMPROVEMENT LOAN SPECIAL REVENUE ACCOUNT BE PLACED IN SHORT-TERM INVESTMENTS AND EARNINGS DEPOSITED BACK INTO THE ACCOUNT; AND AMENDING SECTION 76-14-112, MCA.

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

Section 1. Section 76-14-112, MCA, is amended to read:

"**76-14-112. Rangeland improvement loan special revenue account.** (1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests.

(3) Deposits to the rangeland improvement loan special revenue account must be placed in short-term investments, and the earnings must be deposited in the rangeland improvement loan special revenue account."

Approved May 4, 2023

CHAPTER NO. 438

[SB 228]

AN ACT PROHIBITING THE BAN OF PETROLEUM FUEL-POWERED MACHINERY, VEHICLES, VESSELS, TOOLS, FACILITIES, APPLIANCES, OR EQUIPMENT; AMENDING SECTION 7-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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;

(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, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); ~~or~~

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1)~~.~~*; or*

(26) any power to prohibit the purchase or use of any fuel derived from petroleum, including but not limited to methane, propane, gasoline, and diesel fuel, or the installation or use of any vehicles, vessels, tools, or commercial and residential appliances that burn or transport petroleum fuels."

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

Approved May 4, 2023

CHAPTER NO. 439

[SB 232]

AN ACT GENERALLY REVISING PUBLIC RECORDS LAWS; ESTABLISHING SEPARATE REQUIREMENTS FOR EXECUTIVE BRANCH AGENCIES; ESTABLISHING A DEADLINE FOR EXECUTIVE BRANCH AGENCIES TO ACKNOWLEDGE RECEIPT OF A PUBLIC INFORMATION REQUEST; ALLOWING FOR AN EXTENSION OF THE RESPONSE DEADLINE BY MUTUAL AGREEMENT BETWEEN THE REQUESTER AND THE AGENCY; ALLOWING A PERSON TO FILE AN ACTION IN DISTRICT COURT IF AN EXECUTIVE BRANCH AGENCY FAILS TO MEET THE RESPONSE DEADLINE; AND AMENDING SECTIONS 2-6-1006 AND 2-6-1009, MCA.

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

Section 1. Section 2-6-1006, MCA, is amended to read:

"**2-6-1006. Public information requests -- fees.** (1) *(a)* A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons.

(b) (i) All public agencies are governed by this subsection (1).

(ii) A public agency that is not an executive branch agency must meet the requirements of subsection (2) when responding to a public information request.

(iii) (A) Except as provided in subsections (1)(b)(iii)(B) and (1)(b)(iv), all executive branch agencies must meet the requirements of subsection (3) when responding to a public information request.

(B) The provisions of subsection (3) apply to the secretary of state, the justice department, the superintendent of public instruction, and the state auditor beginning on October 1, 2025.

(iv) The secretary of state must meet the requirements of subsection (4) regarding fees.

~~(2) Upon receiving a request for public information, a public agency shall respond in a timely manner to the requesting person by:~~

~~(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or.~~

~~(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (3).~~

~~(3)~~*(c)* A public agency *other than the office of the secretary of state* may charge, *pursuant to this subsection (1)(c),* a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

~~(4)~~*(d)* A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.

~~(5)~~*(e)* If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.

~~(6) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance.~~

~~(b) The secretary of state may not charge a fee to a member of the legislature or public officer for any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.~~

(2) Upon receiving a request for public information, a public agency that is not an executive branch agency shall respond in a timely manner to the requesting person by:

(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (1)(c).

(3) (a) An executive branch agency shall respond to a public information request by acknowledging receipt of the request within 5 business days of the agency's designated contact person receiving the request. Except for confidential,

privileged, or otherwise protected information that is not subject to public disclosure under applicable law and information withheld from public scrutiny as provided in 2-6-1003, the executive branch agency shall respond by:

(i) making the public information maintained by the executive branch agency available in a timely manner for inspection and copying by the requesting person;

(ii) providing a specified public record to the requesting person within 5 working days of the executive branch agency's acknowledgment of receipt of the request if the request is for a single, specific, clearly identifiable, and readily available public record. This subsection (3)(a)(ii) does not apply to requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations; or

(iii) responding as provided in subsection (3)(b).

(b) (i) If a request seeks public information that cannot be readily identified and gathered, the agency shall provide the requesting person an estimate of the time it will take to fulfill the request and any fees that may be charged pursuant to subsection (1)(c) and shall provide the public information to the requesting person in a timely manner, which may be, except as provided in subsection (3)(b)(ii), within:

(A) 90 days of the public agency's acknowledgment of the request; or

(B) 6 months of the public agency's acknowledgment of the request if the agency determines 90 days is not feasible for a response and the agency provides the requesting person written notice explaining why the agency is unable to provide a response within 90 days.

(ii) If an executive branch agency requires a requesting person to pay an estimated fee pursuant to subsection (1)(c), the agency's obligation to respond to the request is suspended upon sending the estimate to the requesting person and remains suspended until the requesting person makes payment.

(c) An executive branch agency may request additional information or clarification from a requesting person for the purpose of expediting the agency's response to the request. If the agency has requested additional information or clarification, the agency's obligation to respond to the request is suspended until the requesting person provides the requested information or clarification or until the requesting person denies the agency's request for additional information or clarification. If a person requesting public information fails to respond within 30 days to an agency's request for additional information or clarification, the agency may close the request after notifying the requesting person.

(d) Each executive branch agency must have a designated contact for public information requests posted on its website.

(e) By November 1, 2024, or 1 month after this section becomes applicable to an executive branch agency, whichever occurs second, an executive branch agency that is subject to this subsection (3) shall:

(i) establish a public information request process describing the steps for submitting a request and the process the agency will follow when responding to a request for public information, which must be published on a state website;

(ii) provide statistics about public information requests received by the designated contact of the agency, including the number of requests and the agency's response time to fulfill or otherwise resolve the requests; and

(iii) retain and publish on a state website the public information requests the agency has received and the agency's response. The agency is not required to publish requests or responses if the request:

(A) was not submitted according to the agency's posted process;

(B) pertains only to a specific person or property, including requests for applications, vital records, licenses, permits, registrations, and related supporting documents; or

(C) was for information accessible on a state website or other publication available at the time the request was made.

(4) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance.

(b) The secretary of state may not charge a fee to a member of the legislature or public officer for any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties."

Section 2. Section 2-6-1009, MCA, is amended to read:

"**2-6-1009. Written notice of denial -- *failure to meet response deadline* -- civil action -- costs to prevailing party in certain actions to enforce constitutional or statutory rights.** (1) A public agency that denies an information request to release information or records shall provide a written explanation for the denial.

(2) If a person who makes an information request receives a denial from a public agency and believes that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the Montana Rules of Civil Procedure in district court.

(3) If a person who makes an information request to an executive branch agency does not receive a response from the agency as required in 2-6-1006(3), the person may file a complaint in district court.

~~(3)~~*(4)* A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of Title 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney fees."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 4, 2023

CHAPTER NO. 440

[SB 252]

AN ACT GENERALLY REVISING THE CODE OF ETHICS FOR ELECTED OFFICIALS AND GOVERNMENT EMPLOYEES; EXPANDING THE CODE OF ETHICS TO THE JUDICIAL BRANCH, JUDICIAL OFFICERS, JUSTICES, AND JUDGES; REVISING DEFINITIONS; AND AMENDING SECTIONS 2-2-101, 2-2-102, 2-2-103, 2-2-136, AND 2-2-144, MCA.

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

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

"**2-2-102. Definitions.** As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of $50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) *(a)* "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(b) The term does not include a district court or an entity under the control of the judicial branch of state government.

(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*, including an employee of the judicial branch*;

(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.

(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.

(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.

(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.

(12) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102 *and all judicial officers, justices, district court judges, and judges of the judicial branch of state government*."

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

"**2-2-101. Statement of purpose.** The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between *judges,* legislators, *judicial officers,* other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances."

Section 3. Section 2-2-103, MCA, is amended to read:

"**2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A *judicial officer,* public officer, *judge,* legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A *judicial officer,* public officer, *judge,* legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) *judicial officers,* state officers, *judges,* legislators, and state employees is provided for in 2-2-136;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

Section 4. Section 2-2-136, MCA, is amended to read:

"**2-2-136. Enforcement for *judicial officers,* 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 *judicial officer if a judicial act is involved in the complaint or 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.

(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.

(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.

(2) (a) 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. 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.

(3) (a) Except as provided in subsection (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.

(4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

Section 5. Section 2-2-144, MCA, is amended to read:

"**2-2-144. Enforcement for local government.** (1) Except as provided in subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county

attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than $50 or more than $1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than $50 or more than $1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to 2-2-136.

(b) In a local government that establishes a panel under this subsection (5), a complaint must be referred to the panel prior to making a complaint to the county attorney.

(6) If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to 2-2-136.

(7) This section does not apply to allegations of a violation by a judicial officer, justice, district court judge, or judge under the judicial branch of state government."

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.

Approved May 4, 2023

CHAPTER NO. 441

[HB 289]

AN ACT REVISING NOTICE REQUIREMENTS FOR AN OWNER'S SHARE OF COSTS TO DEVELOP AN OIL OR GAS WELL; AND AMENDING SECTION 82-11-202, MCA.

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

Section 1. Section 82-11-202, MCA, is amended to read:

"**82-11-202. Pooling of interest within spacing unit.** (1) (a) When two or more separately owned tracts are embraced within a temporary or permanent spacing unit or when there are separately owned interests in all or a part of the spacing unit, then the persons owning those interests may pool their interests for the development and operation of the spacing unit.

(b) The board, upon the application of an interested person, may enter an order pooling all interests in the permanent spacing unit for the development and operation of the permanent spacing unit and the allocation of production if the applicant has made an unsuccessful, good faith attempt to voluntarily pool the interests within the permanent spacing unit. The applicant must be a person who owns an interest in the oil or gas underlying the permanent spacing unit or who has drilled a well, proposes to drill a well, or proposes to conduct other operations on a well, including recompleting, deepening, or stimulation. The pooling order must be made after a *board* hearing*, is effective from the date of first operations within the spacing unit,* and must be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the permanent spacing unit the opportunity to recover or receive without unnecessary expense a just and equitable share of the oil or gas produced and saved from the spacing unit. Operations incident to the drilling of a well upon any portion of a permanent spacing unit covered by a pooling order are considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit by the several owners of the tracts. That portion of the production allocated to each tract included in a permanent spacing unit covered by a pooling order must when produced be considered for all purposes to have been produced from the tract by a well drilled on the tract.

(2) (a) As to each owner who refuses to pay the owner's share of the costs of development or other operations referred to in subsection (1), the order must provide for payment of the owner's share of the cost out of and only out of production from the well allocable to the owner's interest in the permanent spacing unit, excluding royalty or other interest not obligated to pay any part of the cost and excluding the royalty provided for in subsection (2)(c). If a well has not been drilled prior to the hearing on the application, the pooling order must provide for the drilling and operating of a well on the permanent spacing unit and for the payment of the cost of the well, which may include a reasonable charge for supervision, handling, and storage. If a dispute arises as to the cost, the board by subsequent order, after notice and hearing, shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well are, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of the costs out of the production. After all costs of drilling and operation are recovered, all of the owners in the permanent spacing unit are entitled to receive their respective shares of the production of the well as their interest may appear after deducting their respective shares of current operating costs.

(b) If a well has been drilled prior to the hearing on the application and an owner, after written demand, has failed or refused to pay the owner's share of the costs of development or other operations referred to in subsection (1) or if a well has not been drilled prior to the hearing on the application and an owner refuses to agree to pay the owner's share of drilling and completion costs, in addition to the costs under subsection (2)(a), the order must include as costs:

(i) 100% of the refusing owner's share of the cost of newly acquired surface equipment beyond the wellhead connections, including but not limited to stock tanks, separators, treaters, pumping equipment, and piping, plus 100% of the

refusing owner's share of the cost of operation of the well commencing with first ~~production~~ *production* and continuing until the agreeing owners have recovered the costs; and

(ii) 200% of the refusing owner's share of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received from the refusing owners by the agreeing owners, and 200% of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A refusing owner of an oil and gas interest in a spacing unit that is not subject to any lease or other contract for development of oil and gas is considered to own a landowner royalty equal to one-eighth of the owner's proportionate share of production from the well until such time as the consenting owners recover the costs specified in subsection (2)(b). Any interest in production from the spacing unit to which the interest of the refusing owner may be subject must be deducted from the royalty considered to be owned by the refusing owner. After costs have been recovered by the agreeing owners, the refusing owner owns the refusing owner's proportionate share of the well, surface facilities, and production and is liable for further costs as if the refusing owner had originally agreed to drilling of the well.

(d) The operator of a well under a pooling order in which there is a refusing owner shall upon demand furnish the refusing owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced and the amount of proceeds realized from the sale of production during the preceding month.

(e) If an owner of an oil and gas interest in a temporary spacing unit refuses to agree to pay the owner's share of the costs of drilling and operating a well drilled within the unit and an application is filed for pooling of the interests in the well in a permanent spacing unit, the board shall, upon hearing the application for pooling of the interests for the well, order that the parties who agreed to share in the cost of drilling and operating the well prior to commencement of the drilling operation recover out of the refusing owner's share of the costs as provided in subsections (2)(a) and (2)(b).

(3) (a) An owner is presumed to have refused to pay the owner's share of costs if ~~prior to the spud date of the well,~~ the owner fails to pay or agree in writing to promptly pay ~~the~~ *their* share of the costs after notice by the well operator *of* either:

(i) ~~acknowledged~~ *an acknowledgment* in writing by the owner ~~as received~~; or

(ii) ~~sent at least 30 days prior to the spud date of the well to the owner~~ by certified mail *to the owner*, addressed to the owner's address of record in the office of the clerk and recorder of the county where the well is to be drilled or to the owner's address on file with the board.

(b) The notice must*:*

(i) allow the owner 30 days to elect to pay the owner's share of costs; and

(ii) set forth the location of the well, the projected depth and target formations, the anticipated costs of drilling and completing the well, and the anticipated *or actual* spud date of the well."

Approved May 4, 2023

CHAPTER NO. 442

[SB 310]

AN ACT REVISING LAWS RELATED TO PRESUMPTIVE OCCUPATIONAL DISEASES; ADDING PRESUMPTIVE OCCUPATIONAL DISEASES PROXIMATELY CAUSED BY FIREFIGHTING ACTIVITIES; AND AMENDING SECTION 39-71-1401, MCA.

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

Section 1. Section 39-71-1401, MCA, is amended to read:

"**39-71-1401. (Temporary) 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 39-71-1402 and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.

(b) Coverage under 39-71-1402 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) cervical cancer after 15 years;

~~(d) myocardial infarction after 10 years;~~

(e) colorectal cancer after 10 years;

(f) esophageal cancer after 10 years;

(g) kidney cancer after 15 years;

(h) leukemia after 5 years;

(i) lung cancer after 4 years;

~~(i)~~*(j)* mesothelioma or asbestosis after 10 years;

~~(j)~~*(k)* multiple myeloma after 15 years;

(l) myocardial infarction after 10 years;

~~(k)~~*(m)* non-Hodgkin's lymphoma after 15 years; and

~~(l) lung cancer after 4 years~~

(n) testicular cancer after 10 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 39-71-1402, 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 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 39-71-1402 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 39-71-1402 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 39-71-1402 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. (Void on occurrence of contingency--sec. 7, Ch. 158, L. 2019.)"

Approved May 4, 2023

CHAPTER NO. 443

[SB 312]

AN ACT REVISING BREWERY LAWS TO ALLOW FOR COLLABORATION BEERS; ALLOWING BREWERS TO SERVE BEER NOT BREWED ON THE PREMISES IF MADE IN COLLABORATION WITH ANOTHER MONTANA SMALL BREWERY; PROVIDING RESTRICTIONS; AND AMENDING SECTIONS 16-3-213 AND 16-3-214, MCA.

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

Section 1. Section 16-3-213, MCA, is amended to read:

"**16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions -- *brewer collaboration*.** (1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

(2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide production of not less than 100 barrels or more than 60,000 barrels, including:

(i) the production of all affiliated manufacturers; and

(ii) beer purchased from any other beer producer to be sold by the brewery.

(b) A small brewery may, at one location for each brewery license and at no more than three locations including affiliated manufacturers, provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises*, subject to subsection (4)*. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day for consumption on the premises or in prepared servings through curbside pickup, provided that the 48-ounce limit may not in any way limit a small brewery's sales as provided in 16-3-214(1)(a)(iii). No more than 2,000 barrels may be provided annually for on-premises consumption including all affiliated manufacturers.

(3) For the purposes of this section, "affiliated manufacturer" means a manufacturer of beer:

(a) that one or more members of the manufacturing entity have more than a majority share interest in or that controls directly or indirectly another beer manufacturing entity;

(b) for which the business operations conducted between or among entities are interrelated or interdependent to the extent that the net income of one entity cannot reasonably be determined without reference to operations of the other entity; or

(c) of which the brand names, products, recipes, merchandise, trade name, trademarks, labels, or logos are identical or nearly identical.

(4) A small brewery may serve in its sample room beer not brewed and fermented on the premises if:

(a) the beer is brewed in collaboration with another brewery, including multiple breweries;

(b) all brewers were actively involved in the brewing of the beer. For the purposes of this subsection (4)(b), the term "actively involved" means that all brewers were present for the brewing process.

(c) no more than six distinct collaboration beers, brewed and fermented at another brewery, may be served in a calendar year;

(d) the amount of beer that a brewer serves under this section, for any one type of distinct collaboration beer, does not exceed an equal proportion of the beer produced based on the number of participating breweries or seven barrels, whichever is less; and

(e) all brewers report to the department:

(i) that the brewers will collaborate as provided in this subsection (4) prior to the collaboration; and

(ii) sales from the collaboration for tax reporting."

Section 2. Section 16-3-214, MCA, is amended to read:

"**16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery to:

(i) a wholesaler;

(ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver the beer and if:

(A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day to each licensed retailer; and

(B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a year; or

(iii) the public, including curbside pickup between 8 a.m. and 2 a.m. in original packaging or growlers;

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products *or collaboration products* at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) A brewery may not use a common carrier for delivery of the brewery's product to the public or to licensed retailers.

(3) A brewery may import or purchase, upon terms and conditions the department may require, necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing purposes.

(4) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

(5) This section does not prohibit a licensed brewer from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

Approved May 4, 2023

CHAPTER NO. 444

[SB 321]

AN ACT REVISING STALKING LAWS TO INCLUDE THE USE OF GLOBAL POSITIONING DEVICES AND SIMILAR TECHNOLOGICAL MEANS; PROVIDING A DEFINITION; AND AMENDING SECTION 45-5-220, MCA.

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

Section 1. 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 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) "Monitors" includes the use of any electronic, digital, or global positioning device or similar technological means.

~~(b)~~*(c)* "Reasonable person" means a reasonable person under similar circumstances as the victim. This is an objective standard.

~~(c)~~*(d)* "Substantial emotional distress" means significant mental suffering or distress that may but does not necessarily require medical or other professional treatment or counseling.

(3) This section does not apply to a constitutionally protected activity.

(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.

(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).

(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.

(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."

Approved May 4, 2023

CHAPTER NO. 445

[SB 323]

AN ACT GENERALLY REVISING MUNICIPAL ZONING LAWS; REQUIRING CERTAIN CITIES TO ALLOW THE USE OF DUPLEX HOUSING IN ZONING REGULATIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-2-304 AND 76-2-309, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 76-2-304, MCA, is amended to read:

"**76-2-304. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

(a) made in accordance with a growth policy; and

(b) designed to:

(i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and the general welfare; and

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) promotion of compatible urban growth;

(d) the character of the district and its peculiar suitability for particular uses; and

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) In a city with a population of at least 5,000 residents, duplex housing must be allowed as a permitted use on a lot where a single-family residence is a permitted use, and zoning regulations that apply to the development or use of duplex housing may not be more restrictive than zoning regulations that are applicable to single-family residences.

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

(a) "Duplex housing" means a parcel or lot with two dwelling units that are designed for residential occupancy by not more than two family units living independently from each other.

(b) "Family unit" means:

(i) a single person living or residing in a dwelling or place of residence; or

(ii) two or more persons living together or residing in the same dwelling or place of residence.

(c) "Single-family residence" has the meaning provided in 70-24-103."

Section 2. Section 76-2-309, MCA, is amended to read:

"**76-2-309. Conflict with other laws.** (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part ~~shall~~ *must* govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, *except for restrictions provided in 76-2-304(3),* the provisions of ~~such~~ *the* statute or local ordinance or regulation ~~shall~~ *must* govern."

Section 3. Effective date. [This act] is effective January 1, 2024.

Approved May 4, 2023

CHAPTER NO. 446

[SB 325]

AN ACT REVISING LAWS RELATED TO THE PRIVACY OF MARITAL COMMUNICATIONS; APPLYING THE SPOUSAL PRIVILEGE TO ELECTRONIC COMMUNICATIONS BETWEEN SPOUSES; PROHIBITING GOVERNMENTAL BODIES FROM REQUESTING OR REQUIRING THE DISCLOSURE OF COMMUNICATIONS COVERED BY SPOUSAL PRIVILEGE FROM SERVICES THAT TRANSMIT ELECTRONIC COMMUNICATIONS; PROHIBITING AN ELECTRONIC COMMUNICATION SERVICE FROM BEING ADJUDGED IN CONTEMPT IF THE ELECTRONIC COMMUNICATION SERVICE REFUSES TO DISCLOSE CERTAIN INFORMATION; AND AMENDING SECTION 26-1-802, MCA.

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

Section 1. Section 26-1-802, MCA, is amended to read:

"**26-1-802. Spousal privilege.** *(1)* ~~Neither~~ *A* spouse may *not*, without the consent of the other *spouse*, testify during or after the marriage concerning any communication made by one to the other during their marriage.

(2) A judicial, legislative, administrative, or other governmental body may not request or require the disclosure of an electronic communication made by one spouse to the other during their marriage from a spouse or an electronic communication service used by the spouse.

(3) A spouse or an electronic communication service used by the spouse may not be adjudged in contempt by a judicial, legislative, administrative, or other body having the power to issue subpoenas for refusing to disclose or produce electronic communications made by one spouse to the other during their marriage.

(4) The privilege *under subsections (1) through (3):*

(a) is restricted to communications made during the existence of the marriage relationship and does not extend to communications made prior to the marriage or to communications made after the marriage is dissolved.*; and*

~~The privilege~~

(b) does not apply to a civil action or proceeding by one spouse against the other or to a criminal action or proceeding for a crime committed by one spouse against the other or against a child of either spouse.

(5) For the purposes of this section, "electronic communication" and "electronic communication service" have the meanings provided in 46-5-601. The terms do not include communications transmitted by the statewide telecommunications network provided for in 2-17-506."

Approved May 4, 2023

CHAPTER NO. 447

[SB 330]

AN ACT REQUIRING A COUNTY CLERK TO ACCEPT ELECTRONIC NOTARIZATIONS; AND AMENDING SECTION 7-4-2611, MCA.

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

Section 1. Section 7-4-2611, MCA, is amended to read:

"**7-4-2611. Role and duties of county clerk and election administrator.** (1) The county clerk of a county is also clerk of the county commissioners and ex officio recorder. A duty imposed by law upon the officer, whether as county clerk, clerk of the county commissioners, or recorder, must be performed by the county clerk, and any official act performed or certified by the county clerk is as valid and effectual as if performed and certified by the clerk of the county commissioners or the recorder.

(2) The county clerk shall:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records that may be filed or deposited in the county clerk's office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on a question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the orders and warrants to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board on the petitions and applications;

(i) record all orders levying taxes;

(j) designate upon each account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record or any account on file in the county clerk's office;

(k) when a new township is organized or the boundaries of a township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries of the township organized or altered;

(l) accept electronic notarizations completed in accordance with Title 1, chapter 5, part 6; and

~~(l)~~*(m)* keep other records and books and perform other duties that are prescribed by law or by rule or order of the board.

(3) An election administrator shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner of political practices.

(4) An election administrator shall make statements and other information filed under the provisions of Title 13, chapters 35, 36, and 37, available for public inspection and copying during the office hours determined by the governing body by resolution after a public hearing and make copying facilities available free of charge or at a charge not to exceed actual cost."

Approved May 4, 2023

CHAPTER NO. 448

[SB 331]

AN ACT REVISING EXEMPTION LAW FOR CERTAIN CONDOMINIUMS AND TOWNHOUSES; AMENDING SECTION 76-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-3-203, MCA, is amended to read:

"**76-3-203. Exemption for certain condominiums and townhouses.** *(1)* Condominiums, townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

~~(1)~~*(a)* the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or

~~(2)~~*(b)* the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations *pertaining to land use, density, bulk and dimensional requirements, landscaping, and parking requirements* when local zoning regulations are in effect.

(2) A determination whether the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter must be made by the governing body or the agent or agency designated by the governing body within 20 working days of the receipt of an application containing all materials and information required by the governing body to complete the determination.

(3) The governing body may not enact regulations prohibiting the townhome form of ownership or impose conditions on a determination that the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter, and may not require the condominium, townhome, townhouse, or conversion proposal to undergo a conditional use permit or other quasi-judicial governmental review process pursuant to regulations adopted pursuant to Title 76, chapter 2, as a prerequisite to determining eligibility for an exemption from the provisions of this chapter."

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

Approved May 4, 2023

CHAPTER NO. 449

[HB 234]

AN ACT REVISING LAWS REGARDING THE PUBLIC DISPLAY OR DISSEMINATION OF OBSCENE MATERIAL TO MINORS; CLARIFYING THE DISTINCTION BETWEEN TWO CRIMINAL OFFENSES, OBSCENITY

AND THE DISPLAY OR DISSEMINATION OF OBSCENE MATERIAL TO MINORS; REVISING THE DEFINITION OF "NEWSSTAND" AND PROVIDING A DEFINITION OF "COMMERCIAL ESTABLISHMENT" AND PROVIDING THAT NEITHER TERM INCLUDES SCHOOLS, LIBRARIES, OR MUSEUMS; AND AMENDING SECTIONS 45-8-201, 45-8-205, AND 45-8-206, MCA.

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

Section 1. Section 45-8-201, MCA, is amended to read:

"**45-8-201. Obscenity.** (1) A person commits the offense of obscenity when, with knowledge of the obscene nature of the material, the person purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under 18 years of age;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion of the performance that makes it obscene, to anyone under 18 years of age;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under 18 years of age;

(d) performs an obscene act or otherwise presents an obscene exhibition of the person's body to anyone under 18 years of age;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under 18 years of age; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by the person to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence is admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) the appeal to prurient interest or absence of that appeal in advertising or other promotion of the material; or

(e) the purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, ~~or~~ counties*, or school districts* may adopt ordinances*,* ~~or~~ resolutions*, or policies* that are more restrictive as to obscenity than the provisions of ~~45-8-206 and~~ this section."

Section 2. Section 45-8-205, MCA, is amended to read:

"**45-8-205. Definitions.** As used in 45-8-205 through 45-8-208, the following definitions apply:

(1) "Commercial establishment" means a place of business that invites the general public for the primary purpose of selling goods or offering entertainment. The term does not include a school, library, or museum.

~~(1)~~*(2)* "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors.

~~(2)~~*(3)* "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

~~(3)~~*(4)* "Minor" means a person under 18 years of age.

~~(4)~~*(5)* "Newsstand" means a stand that distributes or sells newspapers or magazines. *The term does not include a school, library, or museum.*

~~(5)~~*(6)* "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience of one or more, with or without consideration.

~~(6)~~*(7)* "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

~~(7)~~*(8)* "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

~~(8)~~*(9)* "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

~~(9)~~*(10)* "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality."

Section 3. Section 45-8-206, MCA, is amended to read:

"**45-8-206. Public display or dissemination of obscene material to minors.** (1) A person having custody, control, or supervision of ~~any~~ *a* commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material. However, a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor.

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, tribal identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age; *or*

~~(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;~~

~~(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;~~

~~(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or~~

~~(e)~~*(b)* the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

(3) The offense of public display or dissemination of obscene material to minors under this section is separate from and may not be construed to negate or limit the provisions of 45-8-201 regarding the offense of obscenity.

(4) Cities, towns, counties, or school districts may adopt ordinances, resolutions, or policies that are more restrictive as to the display or dissemination of obscene material to minors than the provisions of this section."

Approved May 10, 2023

CHAPTER NO. 450

[HB 971]

AN ACT GENERALLY REVISING THE ENVIRONMENTAL POLICY ACT; CLARIFYING AND EXCLUDING THE USE OF GREENHOUSE GAS EVALUATIONS; PROVIDING AN APPROPRIATION; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-1-201, MCA, is amended to read:

"**75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsections (2) and (3), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking for a state-sponsored project that may have an impact on the Montana human environment by projects in Montana; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(II) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(III);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking for state-sponsored projects, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment in Montana are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment in Montana a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse effects on Montana's environment that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the Montana human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a specific course of action.

(vi) recognize the potential long-range character of environmental impacts in Montana and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize cooperation in anticipating and preventing a decline in the quality of Montana's environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of Montana's environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the legislature and the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in Montana and with any Montana local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency in Montana with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include ~~a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature~~ *an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state's borders*.

(b) An environmental review conducted pursuant to subsection (1) may include *an evaluation if:* ~~a review of actual or potential impacts beyond Montana's borders if it is conducted by:~~

~~(i) the department of fish, wildlife, and parks for the management of wildlife and fish;~~

~~(ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that the review is required by law, rule, or regulation; or~~

~~(iii)~~*(i) conducted jointly by* a state agency and a federal agency to the extent the review is required by the federal agency*; or*

(ii) the United States congress amends the federal Clean Air Act to include carbon dioxide emissions as a regulated pollutant.

(3) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(4) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (4) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(5) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection (5)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection (5)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue, and except as provided in subsection (6)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.

(ii) Except as provided in subsection (6)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the agency's decision.

(b) (i) When a party challenging the decision or the adequacy of the environmental review or decision presents information not in the record certified by the agency, the challenging party shall certify under oath in an affidavit that the information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

(ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to the agency for the agency's consideration and an opportunity to modify its decision or environmental review before the court considers the evidence as a part of the administrative record under review.

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

(c) (i) The remedies provided in this section for successful challenges to a decision of the agency or the adequacy of the statement are exclusive.

(ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent injunction, or other equitable relief may not enjoin the issuance or effectiveness of a license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction, a permanent injunction, or other equitable relief, that the:

(A) party requesting the relief will suffer irreparable harm in the absence of the relief;

(B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in the public interest, a court:

(I) may not consider the legal nature or character of any party; and

(II) shall consider the implications of the relief on the local and state economy and make written findings with respect to both.

(C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief to which the applicant has been determined to be entitled.

(d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the case. If the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined.

(e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to act may intervene in a lawsuit in court

challenging a decision or statement by a department or agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

(8) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(9) A project sponsor may request a review of the significance determination or recommendation made under subsection (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 2. Appropriation. There is appropriated $500 from the general fund to the department of environmental quality for the biennium beginning July 1, 2023, to update guidance documents related to 75-1-201.

Section 3. 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 4. Coordination instruction. If both House Bill No. 641 and [this act] are passed and approved, then House Bill No. 641 is void.

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

Approved May 10, 2023

CHAPTER NO. 451

[SB 274]

AN ACT REVISING MAJOR FACILITY SITING DECISION REQUIREMENTS; AMENDING SECTION 75-20-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-20-301, MCA, is amended to read:

"**75-20-301. Decision of department -- findings necessary for certification.** (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(10)(a) and (10)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

(f) that the facility will serve the public interest~~, convenience, and necessity~~;

(g) that the ~~department or board has issued~~ *applicant will obtain* any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3) *prior to construction*; and

(h) that the use of public lands or federally designated energy corridors for location of a facility defined in 75-20-104(10)(a) or (10)(b) was evaluated and public lands or federally designated energy corridors for that facility were selected whenever ~~their use was compatible with:~~ *determined practicable by both the applicant and the department.*

~~(i) the requirements of subsections (1)(a) through (1)(g); and~~

~~(ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined in 75-20-104(10)(a).~~

(2) In determining that the facility will serve the public interest~~, convenience, and necessity~~ under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(10)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:

(i) a violation of a law or standard that protects the environment; or

(ii) a violation of a law or standard that protects the public health and safety.

(4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny the certificate."

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

Approved May 8, 2023

CHAPTER NO. 452

[SB 279]

AN ACT REVISING THE APPLICABILITY OF OFFER OF SETTLEMENT LAW TO ACTIONS OR CLAIMS FOR $3 MILLION; AND AMENDING SECTION 25-7-105, MCA.

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

Section 1. Section 25-7-105, MCA, is amended to read:

"**25-7-105. Offer of settlement.** (1) (a) At any time more than 60 days after service of the complaint and more than 30 days before a trial in district court begins, a party may serve upon the adverse party a written offer to settle a claim for the money or property or to the effect specified in the offer.

(b) At any time after commencement of an action and more than 10 days before a trial in a court of limited jurisdiction begins, a party may serve upon the adverse party a written offer to settle a claim for the money or property or to the effect specified in the offer.

(c) If within 10 days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service of the offer and notice of acceptance with the clerk of court and the court shall enter judgment. An offer not accepted is considered withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. If the final judgment is less favorable to the offeree than the offer, the offeree shall pay the costs incurred by the offeror after the offer was made. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the liability remains to be determined by further proceedings, either party may make a written offer of settlement. The offer has the same effect as an offer before trial, and the applicable provisions of subsection (1) apply if the offer is served within a reasonable time not less than 10 days prior to the commencement of a hearing to determine the amount or extent of liability.

(3) For the purposes of this section, costs include reasonable attorney fees.

(4) This section applies only to an action or claim for which the amount contained in a pleading is ~~$50,000~~ *$3 million* or less, exclusive of costs, interest, and service charges, and the action or claim:

(a) arises from contract or breach of contract, other than a contract of insurance, bond, surety, or warranty; or

(b) involves real property."

Approved May 8, 2023

CHAPTER NO. 453

[SB 286]

AN ACT REVISING PROBATE LAW; INCREASING THE VALUE OF PROBATE ESTATES CAPABLE OF COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT TO $100,000; AND AMENDING SECTION 72-3-1101, MCA.

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

Section 1. Section 72-3-1101, MCA, is amended to read:

"**72-3-1101. Collection of personal property by affidavit.** (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the ~~entire~~ *probate* estate, wherever located, less liens and encumbrances, does not exceed ~~$50,000~~ *$100,000*, except as provided in subsection (2);

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) The department of revenue may refund unclaimed property to a successor of the decedent, pursuant to the provisions of Title 70, chapter 9, part 8, if the value of the unclaimed property is $5,000 or less regardless of the value of the estate.

(3) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1)."

Approved May 8, 2023

CHAPTER NO. 454

[SB 288]

AN ACT ELIMINATING A REPEAL DATE ON CERTAIN MOTOR VEHICLE RECYCLING AND DISPOSAL LAWS; REPEALING SECTION 5, CHAPTER 427, LAWS OF 2019, AND SECTION 1, CHAPTER 72, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 5, Chapter 427, Laws of 2019, and Section 1, Chapter 72, Laws of 2021, are repealed.

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

Approved May 8, 2023

CHAPTER NO. 455

[SB 289]

AN ACT ALLOWING THE BOARD OF REGENTS TO WAIVE TUITION AND FEES FOR SURVIVING SPOUSES AND CHILDREN OF MONTANA FIREFIGHTERS OR PEACE OFFICERS WHO DIED IN THE LINE OF DUTY; AND AMENDING SECTION 20-25-421, MCA.

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

Section 1. Section 20-25-421, MCA, is amended to read:

"**20-25-421. Charges for tuition -- waivers.** (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may utilize waivers in tuition and fees to aid in the recruitment of students to units of the university system and to promote the policy of assisting the categories of students specified in this subsection. The regents may:

(a) waive or discount nonresident tuition for selected and approved nonresident students, including nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons who have one-fourth Indian blood or more or are enrolled members of a federally recognized Indian tribe located within the boundaries of the state of Montana and who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; ~~or~~

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state military duty; *or*

~~(d)~~*(vii)* ~~waive tuition charges for~~ qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection *(2)(c)(vii)*, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

~~(i)~~*(A)* a paid or volunteer ~~member of a municipal or rural fire department~~ *firefighter as described in 7-33-4107 or 19-17-108*;

~~(ii)~~*(B)* a law enforcement officer as defined in 7-32-201; or

~~(iii)~~*(C)* a full-time highway patrol officer."

Approved May 8, 2023

CHAPTER NO. 456

[SB 293]

AN ACT REQUIRING THE PLACEMENT OF POSTERS RELATED TO PREVENTING THE SPREAD OF INVASIVE SPECIES AT PUBLIC REST AREAS; AND AMENDING SECTIONS 60-2-244 AND 80-7-1203, MCA.

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

Section 1. Section 60-2-244, MCA, is amended to read:

"**60-2-244. ~~Human trafficking hotline -- posted notice required at rest areas.~~ *Posted notice required at rest areas -- human trafficking hotline -- invasive species prevention.*** The department of transportation

shall display at each rest area within the limits of the right-of-way of interstate highways and other state highways*:*

(1) a poster created by the department of justice pursuant to 44-4-1501 that provides information regarding the national human trafficking resource center hotline*:; and*

(2) a poster created by the invasive species council pursuant to 80-7-1203 that provides information related to preventing the spread of invasive species."

Section 2. Section 80-7-1203, MCA, is amended to read:

"**80-7-1203. Duties -- reporting -- definition.** (1) The invasive species council shall:

(a) provide policy level recommendations, direction, and planning assistance for combating infestations of invasive species throughout the state and preventing the introduction of other invasive species;

(b) foster cooperation, communication, and coordinated approaches that support federal, state, provincial, regional, tribal, and local initiatives for the prevention, early detection, and control of invasive species;

(c) identify, coordinate, and maintain an independent science advisory panel that informs Montana's efforts based on the current status, trends, and emerging technology as they relate to invasive species management in Montana;

(d) in coordination with stakeholders, identify and implement priorities for coordination, prevention, early detection, rapid response, and control of invasive species in Montana;

(e) champion priority invasive species issues identified by stakeholders to best protect the state;

(f) advise and coordinate with agency personnel, local efforts, and the scientific community to implement program priorities;

(g) implement an invasive species education and outreach strategy;

(h) create a poster that provides information related to preventing the spread of invasive species and provide copies of the poster to the department of transportation for display at rest areas;

~~(h)~~*(i)* work with regional groups to coordinate regional defense and response strategies; and

~~(i)~~*(j)* work toward establishing and maintaining permanent funding for invasive species priorities.

(2) The council may receive and, subject to appropriation by the legislature, expend donations, gifts, grants, and other money necessary to fulfill its duties.

(3) The council shall report on its activities to the governor, the director of the department of natural resources and conservation, and the environmental quality council in accordance with 5-11-210 annually.

(4) For the purposes of this part, "invasive species" means plants, animals, and pathogens that are nonnative to Montana's ecosystem and cause harm to natural and cultural resources, the economy, and human health."

Approved May 8, 2023

CHAPTER NO. 457

[SB 300]

AN ACT REVISING LAWS RELATED TO SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; REVISING QUALIFICATIONS FOR LICENSURE AS A SPEECH-LANGUAGE PATHOLOGY ASSISTANT OR AUDIOLOGY ASSISTANT; AMENDING SECTION 37-15-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 37-15-303, MCA, is amended to read:

"**37-15-303. Qualifications.** (1) To be eligible for licensing by the board as a speech-language pathologist or audiologist, the applicant:

(a) must meet the current academic, supervised clinical practicum, and supervised professional experience requirements as defined by board rule; and

(b) shall pass an examination approved by the board.

(2) (a) To be eligible for licensing by the board as a speech-language pathology assistant or an audiology assistant, the applicant:

(i) must ~~meet~~ *have completed* the ~~current~~ academic~~, supervised clinical practicum, and supervised professional experience requirement, as each is~~ *requirements as* defined by board rule~~, and pass the examination approved by the board~~; or

(ii) shall provide evidence to the board that the applicant~~:~~

~~(A)~~ served as an unlicensed speech-language pathology assistant or an unlicensed audiology assistant sufficient to meet ~~current academic, supervised clinical practicum, and supervised professional experience similar to those defined under~~ *the requirements in* subsection (2)(a)(i) ~~for a period prior to October 1, 2021; and~~ *for a period prior to January 1, 2024.*

~~(B) passed the examination approved by the board.~~

(b) The board shall provide by rule the type of evidence and conditions~~,~~ ~~plus the length of the period required under subsection (2)(a)(ii),~~ to meet equivalency for current academic~~, supervised clinical practicum, and supervised professional~~ experience ~~prior to October 1, 2021~~.

~~(3) The board shall determine the subject and scope of any examination.~~

~~(4)~~*(3)* The standards defined by the board must be equal to or greater than the standards generally accepted as the national norm."

Section 2. Effective date. [This act] is effective January 1, 2024.

Approved May 8, 2023

CHAPTER NO. 458

[SB 307]

AN ACT REVISING NONPROFIT CORPORATION AND CHARITABLE TRUST LAWS; AND PROHIBITING STATE AGENCIES OR STATE OFFICIALS FROM IMPOSING REQUIREMENTS NOT AUTHORIZED BY LAW.

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

Section 1. Limit on nonprofit corporation requirements. (1) Except as provided in subsection (2), a state agency or state official may not impose any annual filing or reporting requirements on any nonprofit corporation with tax-exempt status pursuant to 26 U.S.C. 501(c)(3), as of February 21, 2023, that are more stringent, restrictive, or expansive than the requirements authorized under Montana law.

(2) Subsection (1) does not apply to state grants and contracts, fraud investigations, or enforcement actions against specific nonprofit corporations.

Section 2. Limit on charitable trust requirement. (1) Except as provided in subsections (2) and (3), a state agency or state official may not impose any annual filing or reporting requirements on a charitable trust that are more stringent, restrictive, or expansive than the requirements authorized under Montana law.

(2) Subsection (1) does not apply to state grants and contracts, fraud investigations, or enforcement actions against specific charitable trusts.

(3) Subsection (1) may not be construed to impact the authority of the attorney general to act as a qualified beneficiary for a charitable trust pursuant to 72-38-221.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 35, chapter 2, and the provisions of Title 35, chapter 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [section 2].

Approved May 8, 2023

CHAPTER NO. 459

[SB 309]

AN ACT ESTABLISHING THE ENSIGN JAMES A. SHELTON MEMORIAL HIGHWAY IN FERGUS 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, James A. Shelton was born on September 20, 1916, near Denton, Montana, as the fourth child of John Henry Shelton and Anice Lucinda Cady Shelton; and

WHEREAS, James A. Shelton graduated from Denton High School in 1934 and went on to earn a degree in forestry; and

WHEREAS, James A. Shelton enlisted in the United States Navy in 1941, where he became an aviation cadet and was commissioned ensign in that same year; and

WHEREAS, James A. Shelton was assigned to VS-6 aboard the U.S.S. Enterprise at Pearl Harbor; and

WHEREAS, James A. Shelton was part of the squadron assigned to find the Japanese fleet at the Battle of Midway on June 4, 1942, a turning point in the Second World War; and

WHEREAS, James A. Shelton, along with several members of the aviator squadrons, continued the attack despite low fuel levels and never returned from the battle; and

WHEREAS, James A. Shelton was posthumously awarded the Navy Cross for extraordinary heroism in 1942 and two naval destroyers have subsequently been named in his honor.

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

Section 1. Ensign James A. Shelton memorial highway. (1) There is established the Ensign James A. Shelton memorial highway on the existing state highway 81, beginning at the intersection of state highway 81 and U.S. highway 191 and ending at the intersection of state highways 81 and 80.

(2) The department shall design and install appropriate signs marking the location of the Ensign James A. Shelton memorial highway.

(3) Maps that identify roadways in the state must be updated to include the location of the Ensign James A. Shelton memorial highway when the department updates and publishes the state maps.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved May 8, 2023

CHAPTER NO. 460

[SB 313]

AN ACT REVISING LAWS RELATED TO THE JUDICIAL STANDARDS COMMISSION; REMOVING CERTAIN CONFIDENTIALITY PROVISIONS CONCERNING THE PROCEDURES OF THE JUDICIAL STANDARDS COMMISSION; AMENDING SECTIONS 3-1-1105, 3-1-1106, 3-1-1121, 3-1-1123, 3-1-1124, AND 3-1-1126, MCA; AND REPEALING SECTION 3-1-1122, MCA.

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

Section 1. Section 3-1-1105, MCA, is amended to read:

"**3-1-1105. Confidential proceedings -- rules for commission.** (1) Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126, all papers filed with and proceedings before the commission or masters are confidential and the filing of papers with and the testimony given before the commission or masters is privileged communication.

(2) The commission shall make rules for the conduct of its affairs and the enforcement of confidentiality *and provide public disclosure when appropriate* consistent with this part."

Section 2. Section 3-1-1106, MCA, is amended to read:

"**3-1-1106. Investigation of judicial officers -- complaint -- hearing -- recommendations.** (1) (a) The commission, upon the filing of a written complaint by any citizen of the state, ~~may~~ *shall* initiate an investigation of any judicial officer in the state to determine if there are grounds for conducting additional proceedings before the commission. If the commission's investigation indicates that additional proceedings before the commission may be justified, the commission shall require the citizen who filed the original written complaint to sign a verified written complaint *by affidavit* before conducting additional proceedings.

(b) The commission shall give the judicial officer written notice of the citizen's complaint and of the initiation of an investigation. Notice must also be given if a verified written complaint *by affidavit* is filed and must include the charges made, the grounds for the charges, and a statement that the judicial officer may file an answer. The notice must be signed by the commission.

(2) The commission, after an investigation that it considers necessary and ~~upon~~ *on* a finding of good cause, ~~may~~ *shall*:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer;

(b) ~~confidentially~~ *publicly* advise the judicial officer and the supreme court, in writing, that the complaint will be dismissed if the judicial officer files with the commission a letter stating that the officer will take corrective action satisfactory to the commission; or

(c) request that the supreme court appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after a hearing or after considering the record and the report of the masters the commission finds the charges true, it shall *publicly* recommend to the supreme court the censure, suspension, removal, or disability retirement of the judicial officer."

Section 3. Section 3-1-1121, MCA, is amended to read:

"**3-1-1121. Public disclosure required.** *(1)* If the commission finds good cause to order a hearing pursuant to 3-1-1106(2), the commission must allow public access to:

~~(1)~~*(a)* all papers pertaining to each finding of good cause, including charges that are later determined not to be grounds for recommending retirement or disciplinary action to the supreme court;

~~(2)~~*(b)* the proceedings in which the commission or masters hear the charges against a judge; and

~~(3)~~*(c)* all transcripts or recordings of proceedings before the commission or masters pertaining to the matters described in subsections ~~(1)~~ *(1)(a)* and ~~(2)~~ *(1)(b)*.

(2) A complaint must be made public on request by a member of the public 12 years after dismissal."

Section 4. Section 3-1-1123, MCA, is amended to read:

"**3-1-1123. Public statements by commission.** In any case in which the subject matter becomes public, through independent sources ~~or~~, through a waiver of confidentiality by the judge against whom the complaint has been filed, *or under other circumstances as the commission considers appropriate,* the commission may issue statements as it considers appropriate in order to:

(1) confirm the pendency of the investigation;

(2) clarify the procedural aspects of the disciplinary proceedings;

(3) explain the right of the judge to a fair hearing without prejudgment;

(4) state that the judge denies the allegations; or

(5) declare that there is insufficient evidence for a finding of good cause."

Section 5. Section 3-1-1124, MCA, is amended to read:

"**3-1-1124. Disclosure for judicial selection -- appointment or assignment.** If in connection with the selection or appointment of a judge, any state or federal agency seeks information or written materials from the commission concerning that judge, information ~~may~~ *must* be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected ~~unless the judge signs a waiver of notice~~. If in connection with the assignment of a retired judge to judicial duties, any appropriate authority seeks information or written materials from the commission about that judge, information ~~may~~ *must* be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected ~~unless the judge signs a waiver of notice~~."

Section 6. Section 3-1-1126, MCA, is amended to read:

"**3-1-1126. Commission report to legislature.** ~~(1)~~ The commission shall, as provided in 5-11-210, submit to the legislature a report containing the following information:

~~(a)~~*(1)* identification of each complaint, whether or not verified, received by the commission during the preceding biennium by a separate number ~~that in no way reveals the identity of the judge complained against~~ *that reveals the identity of the judge complained against*;

~~(b)~~*(2)* the date each complaint was filed;

~~(c)~~*(3)* the general nature of each complaint*, including the type of complaint, the issues involved, and the basic facts making up the complaint*;

~~(d)~~*(4)* whether there have been previous complaints against the same judge and, if so, the general nature of the previous complaints;

~~(e)~~*(5)* the present status of all complaints filed with or pending before the commission during the preceding biennium; ~~and~~

~~(f)~~*(6)* whenever a final disposition of a complaint has been made during the preceding biennium, the nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken by the supreme court~~.~~*; and*

(7) how each commission member voted.

~~(2) The commission must observe the confidentiality provisions of this part in fulfilling the requirements of this section.~~"

Section 7. Repealer. The following section of the Montana Code Annotated is repealed:

3-1-1122. Judge's waiver of confidentiality -- hearing made public.

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.

Approved May 8, 2023

CHAPTER NO. 461

[SB 324]

AN ACT REVISING INFORMATION DISCLOSURE LAWS RELATING TO HARVESTING LARGE PREDATORS; PROTECTING THE IDENTITY OF PERMIT AND LICENSE HOLDERS; PROVIDING FOR THE DISCLOSURE OF HARVEST LOCATIONS AT THE HUNTING DISTRICT LEVEL; AMENDING SECTION 87-1-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-214, MCA, is amended to read:

"**87-1-214. Disclosure of information -- legislative finding -- large predators.** (1) Except for information that is required by law to be reported to state or federal officials, the department may not disclose any information that ~~identifies~~ *may identify* any person who ~~has~~ *obtains a permit or license to take a large predator as defined in 87-1-217 or who* lawfully ~~taken~~ *takes* a large predator ~~as defined in 87-1-217 during a hunt~~ without the written consent of the person affected. Information that may not be disclosed includes but is not limited to a person's name, address, phone number, date of birth, social security number, and driver's license number.

(2) The legislature finds that the prohibition on disclosure of information pursuant to subsection (1) is necessary to protect an individual's privacy, safety, and welfare.

(3) The department may publish harvest locations of large predators at the hunting district level."

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

Approved May 8, 2023

CHAPTER NO. 462

[SB 338]

AN ACT REVISING CANDIDATE FILING FEES; AND AMENDING SECTION 13-10-202, MCA.

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

Section 1. Section 13-10-202, MCA, is amended to read:

"**13-10-202. Filing fees.** Filing fees are as follows:

(1) for offices having an annual salary of $2,500 or less and candidates for the legislature, $15;

(2) for county offices having an annual salary of more than $2,500, 0.5% of the total annual salary;

(3) for president ~~in a presidential preference primary~~, an amount equivalent to the filing fee required for a United States senate candidate;

(4) for other offices having an annual salary of more than $2,500, 1% of the total annual salary;

(5) for offices in which compensation is paid in fees, $10;

(6) for officers of political parties, presidential electors, and officers who receive no salary or fees, no filing fee is required."

Approved May 8, 2023

CHAPTER NO. 463

[SB 340]

AN ACT ESTABLISHING LIMITS ON COST-SHARING AMOUNTS FOR INSULIN PRESCRIPTIONS; AMENDING SECTIONS 33-22-129 AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Limitations on cost sharing for insulin. (1) Each individual policy of disability insurance or certificate issued that contains coverage for prescription drugs must limit the insured's required copayment or other cost-sharing requirement to $35 for up to a 30-day supply of insulin, regardless of the amount or type of insulin prescribed.

(2) The limitation in this section applies to insulin covered by the insurer's formulary.

(3) Coverage of insulin prescribed for an insured is not subject to a deductible. Cost-sharing amounts paid by the insured for insulin must be counted toward the insured's deductible.

(4) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

Section 2. Section 33-22-129, MCA, is amended to read:

"**33-22-129. Coverage for *treatment of diabetes* -- outpatient self-management training and education ~~for treatment of diabetes~~ -- limited benefit for medically necessary equipment and supplies -- *limitations on cost-sharing requirements for insulin*.** (1) Each group disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(2) (a) Coverage must include a $250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(b) Nothing in subsection (2)(a) prohibits an insurer from providing a greater benefit.

(3) *(a)* Each group disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for diabetic equipment and supplies that is limited to insulin, syringes, injection aids, devises for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(b) Coverage for insulin must limit the insured's required copayment or other cost-sharing requirement for insulin to $35 for up to a 30-day supply of insulin, regardless of the amount or type of insulin prescribed. The limitation in this subsection (3)(b) applies to insulin covered by the insurer's or group health plan's formulary.

(4) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(5) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

(6) (a) This section does not apply to any employee group insurance program of a city, town, county, school district, or other political subdivision of this state that on January 1, 2002, provides substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies provided for in subsection (3).

(b) Any employee group insurance program of a city, town, county, school district, or other political subdivision of this state that reduces or discontinues substantially equivalent or greater coverage after January 1, 2002, is subject to the provisions of this section."

Section 3. Section 33-35-306, MCA, is amended to read:

"**33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) Title 33, chapter 2, parts 23 and 24;

(e) 33-3-308;

(f) Title 33, chapter 7;

(g) Title 33, chapter 18, except 33-18-242;

(h) Title 33, chapter 19;

(i) 33-22-107, 33-22-128, *33-22-129,* 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and 33-22-153;

(j) 33-22-512, 33-22-515, 33-22-525, and 33-22-526;

(k) Title 33, chapter 22, part 7; and

(l) 33-22-707.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 3, and the provisions of Title 33, chapter 22, part 3, apply to [section 1].

Section 5. Effective date. [This act] is effective January 1, 2024.

Section 6. Applicability. [This act] applies to plans and policies issued on or after January 1, 2024.

Approved May 8, 2023

CHAPTER NO. 464

[SB 344]

AN ACT REVISING LICENSE PLATE LAWS; REVISING LAWS REGARDING THE PLACEMENT OF LICENSE PLATES; ALLOWING FOR THE VERTICAL DISPLAY OF CERTAIN LICENSE PLATES; AND AMENDING SECTION 61-3-301, MCA.

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

Section 1. Section 61-3-301, MCA, is amended to read:

"**61-3-301. Registration -- license plate required -- display.** (1) (a) A person may not operate a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer is properly registered and has the proper license plates conspicuously displayed on the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer. A license plate must be securely fastened to prevent it from swinging and may not be obstructed from plain view.

(b) (i) Except as provided in 61-4-120, 61-4-129, and subsections (1)(b)(ii) through (1)(b)(iv) of this section, all motor vehicles must have one license plate displayed *horizontally* on the front and one license plate displayed *horizontally* on the rear of the motor vehicle.

(ii) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must have a single license plate displayed on the rear of the vehicle*, which may be displayed horizontally or vertically if available space does not permit horizontal display*.

(iii) A custom vehicle or a street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod.

(iv) If a person is not able to comply with the requirement that a front license plate be displayed because of the body construction of the motor vehicle, the person may submit to the highway patrol an application for a waiver along with a $25 inspection fee. A certificate of waiver must be issued upon inspection of the vehicle by a highway patrol officer. The certificate must at all times be carried in the motor vehicle and must be displayed upon demand of a peace officer. Money collected from the inspection fee must be deposited in a highway revenue account in the state special revenue fund to the credit of the department of transportation.

(c) A person may not display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(d) A low-speed electric vehicle or a golf cart operated by a person with a low-speed restricted driver's license must have special license plates, as provided in 61-3-332(9), displayed on the front and rear of the vehicle.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the vehicle is domiciled or the county where the trailer, semitrailer, pole trailer, or travel trailer is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, pole trailer, or travel trailer on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute; ~~or~~

(b) repaint old license plates to resemble current license plates*; or*

(c) invert or reverse a license plate. License plates displayed horizontally must be readable from left to right. License plates displayed vertically must be readable from top to bottom.

(4) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached *by two separate fasteners* to:

(a) the front bumper and the rear bumper of a motor vehicle that is subject to subsection (1)(b)(i) and is equipped with front and rear bumpers; or

(b) a clearly visible location on the rear of a trailer, semitrailer, pole trailer, travel trailer, or motor vehicle that is subject to subsections (1)(b)(ii) through (1)(b)(iv)."

Approved May 8, 2023

CHAPTER NO. 465

[SB 345]

AN ACT REVISING LAWS RELATED TO SEXUAL OFFENDERS; REDEFINING DEVIATE SEXUAL RELATIONS TO INCLUDE SEXUAL INTERCOURSE WITH DEAD HUMAN BODIES; PROHIBITING DEVIATE SEXUAL CONDUCT WITH DEAD HUMAN BODIES; REVISING DEFINITIONS; AND AMENDING SECTIONS 40-4-219, 45-2-101, AND 46-23-502, MCA.

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

Section 1. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child.

(a) In determining how a proposed change will affect the child, the court shall consider the potential impact of the change on the criteria in 40-4-212 and whether:

(i) the parents agree to the amendment;

(ii) the child has been integrated into the family of the petitioner with consent of the parents;

(iii) the child is 14 years of age or older and desires the amendment; or

(iv) one parent has willfully and consistently:

(A) refused to allow the child to have any contact with the other parent; or

(B) attempted to frustrate or deny contact with the child by the other parent.

(b) If one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent, the court shall consider, in addition to all the criteria in 40-4-212 and subsection (1)(a):

(i) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;

(ii) the reasons of each parent for seeking or opposing the change of residence;

(iii) whether the parent seeking to change the child's residence has demonstrated a willingness to promote the relationship between the child and the nonrelocating parent; and

(iv) whether reasonable alternatives to the proposed change of residence are available to the parent seeking to relocate.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(a)(iv) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(b) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal *or dead human body*, as described in 45-2-101 and prohibited under 45-8-218;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625; and

(xi) strangulation of a partner or family member, as described in 45-5-215.

(9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

(i) for the duration of the military service; or

(ii) that continues past the end of the military service."

Section 2. Section 45-2-101, MCA, is amended to read:

"**45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions resulting in a pecuniary loss to the victim of at least $1,500, or $1,500 in value, motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(10) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(11) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(12) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(13) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(14) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(15) "Conduct" means an act or series of acts and the accompanying mental state.

(16) "Conviction" means a judgment of conviction and sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.

(18) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(19) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(20) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(21) "Deviate sexual relations" means any form of sexual intercourse with an animal *or dead human body*.

(22) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against any individual.

(25) A "frisk" is a search by an external patting of a person's clothing.

(26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality within it.

(27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

(28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(29) "Human being" means a person who has been born and is alive.

(30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes related documents submitted as a part of or in support of the claim.

(40) "Mentally disordered" means that a person suffers from a mental disease or disorder that renders the person incapable of appreciating the nature of the person's own conduct.

(41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

(43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

(45) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present, including any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually used for personal use or employment. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial, an administrative, or another governmental agency or official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(52) "Other state" means a state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(53) "Owner" means a person other than the offender who has possession of or other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(54) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(55) "Peace officer" means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(57) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.

(58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(60) "Premises" includes any type of structure or building and real property.

(61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and copies thereof.

(62) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this state.

(72) "Stolen property" means property over which control has been obtained by theft.

(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

(76) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $1,500 by the standards set forth in subsection (77)(a), its value is considered to be an amount less than $1,500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 3. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the

offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601(3), 45-5-602(3), 45-5-603(1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, ~~or~~ 45-5-705*;*, or *45-8-218; or*

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-215, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

Approved May 8, 2023

CHAPTER NO. 466

[SB 354]

AN ACT REVISING LAWS RELATED TO RECIPROCITY FOR NONRESIDENTS SEEKING TO TRAP IN MONTANA; AMENDING SECTION 87-2-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-603, MCA, is amended to read:

"**87-2-603. Class C-2--nonresident trapper's license -- *reciprocity*.** (1) A person not a resident, as defined in 87-2-102, who is 12 years of age or older, ~~upon~~ *on* making application and payment of a fee of $250 to the department, is entitled to a nonresident trapper's license that authorizes the holder to trap and snare predatory animals*,* ~~and~~ nongame wildlife*, and, subject to the provisions of subsection (2), certain fur-bearing species* within the state. The trapping or snaring is permitted only after October 15 of each license year and in the manner provided by law and the rules of the commission and at the places that may be designated in the license.

(2) ~~A person not a resident whose state of residence does not sell nonresident trapper's licenses to Montanans may not be issued a Class C-2 license under subsection (1).~~ *A person seeking a license to trap fur-bearing species under this subsection (2) shall:*

(a) provide a notarized affidavit on a form approved by the department listing the person's legal residence, including the state;

(b) (i) provide documentation that the person's resident state issues nonresident trapping licenses that allow Montana residents to trap the same species for which the person seeks to trap in Montana; or

(ii) attest on the affidavit that the person's resident state does not offer reciprocity for trapping the fur-bearing species the person seeks to trap in Montana because the species does not exist in the resident state; and

(c) provide evidence that the person completed a trapping education course that is equivalent to the trapping education requirements for residents."

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

Approved May 8, 2023

CHAPTER NO. 467

[SB 356]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO NOTIFY THE COUNTY SHERIFF BEFORE ESTABLISHING CHECKING STATIONS; AND AMENDING SECTION 87-1-207, MCA.

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

Section 1. Section 87-1-207, MCA, is amended to read:

"**87-1-207. Establishment of checking stations.** ~~The~~ *(1) Pursuant to subsection (2), the* department is authorized to establish checking stations when considered necessary to inspect licenses of hunters and anglers and to inspect any game animals, fish, or fur-bearing animals in the possession of hunters and anglers.

(2) The department shall provide notice to the county sheriff before establishing a checking station in that county."

Approved May 8, 2023

CHAPTER NO. 468

[SB 358]

AN ACT REQUIRING DISCLOSURE OF LOCAL GOVERNMENT CONTRACTS FOR LOBBYING SERVICES; REQUIRING A LOCAL GOVERNMENT TO POST CERTAIN INFORMATION OR THE LOBBYING CONTRACT TO THE LOCAL GOVERNMENT'S WEBSITE; REQUIRING A LOCAL GOVERNMENT TO PROVIDE NOTICE THAT CONTRACTS FOR LOBBYING SERVICES ARE AVAILABLE FOR PUBLIC REVIEW IF THE LOCAL GOVERNMENT DOES NOT MAINTAIN A WEBSITE; REQUIRING A REPORT AT A REGULARLY SCHEDULED MEETING OF THE LOCAL GOVERNMENT WHEN THE LEGISLATURE IS MEETING IN A REGULAR SESSION; PROVIDING AN EXEMPTION FOR CERTAIN CONTRACTS BETWEEN A LOCAL GOVERNMENT AND AN ASSOCIATION OF LOCAL GOVERNMENT OFFICIALS; PROVIDING A DEFINITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Disclosure of local government lobbying contract -- exemption for local government associations. (1) A local government shall prominently display on the local government's website the following

information regarding contracts for services that would require a person to register as a lobbyist under Title 5, chapter 7:

(a) the contract execution date;

(b) the duration of the contract, including any extension options;

(c) the effective date;

(d) the total amount of money the local government paid in the previous fiscal year;

(e) the identity of all parties to the contract;

(f) the identity of any subcontractor to the contract; and

(g) a list of all legislation advocated for or against by all parties and subcontractors to the contract, including the position taken on each piece of legislation in the prior fiscal year.

(2) In lieu of posting the information required under subsections (1)(a) through (1)(g), the local government may post the contract for lobbying services on the local government's website as long as the contract contains the information specified in subsection (1)(g).

(3) The information required under subsections (1) and (2) must be posted and made available within 60 days after the end of the fiscal year in which the contract is signed. The information must remain posted to the website until the information is required to be updated under this section.

(4) If the local government does not maintain a website, the local government shall provide public notice that contract for lobbying services is available for review by the public at the office of the local government.

(5) At least once a month while the legislature is meeting during each regular session, a local government shall provide a report providing the information required under subsection (1)(g) that is included on the agenda of a regularly scheduled meeting of the local government.

(6) (a) Except as provided in subsection (6)(b), a contract between a local government and an organization or association of local government officials of which the local government is a member and to which the local government pays dues for services in addition to lobbying services is not subject to the disclosure requirements under this section.

(b) If a local government pays or donates money in excess of the normal dues for services to the organization or association and the excess money is used to support lobbying services, the excess money is subject to the disclosure requirements under this section.

(7) For the purposes of this section, "local government" has the same meaning as provided in 2-6-1002.

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

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

Approved May 8, 2023

CHAPTER NO. 469

[SB 363]

AN ACT AUTHORIZING CORRECTIONS OFFICERS TO DETAIN PERSONS ON THE PROPERTY OF ADULT OR JUVENILE STATE CORRECTIONAL FACILITIES IN CERTAIN SITUATIONS; AMENDING SECTION 46-6-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 46-6-507, MCA, is amended to read:

"**46-6-507. Arrest by probation and parole officer *or corrections officer.*** *(1)* A probation and parole officer who, while in the course of conducting the officer's duties, has a reasonable suspicion that a person is interfering or will interfere with the officer's duties or has probable cause to believe that the person is committing or has committed an offense may detain the person. The probation and parole officer shall immediately notify the nearest available law enforcement agency or peace officer, and the law enforcement agency or peace officer shall either take the person into custody or release the person.

(2) A corrections officer employed by the department of corrections pursuant to 44-4-401(2)(a) who, while in the course of conducting the officer's duties on the property of a state correctional facility for adults or juveniles, has reasonable suspicion to believe a person is committing or has committed a violation of 45-6-203, 45-7-306, or 45-7-307 or is aiding or abetting an offender in violation of 45-6-203, 45-7-306, or 45-7-307, may detain the person. The corrections officer shall immediately notify the nearest available law enforcement agency or peace officer, and the law enforcement agency or peace officer shall either take the person into custody or release the person."

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

Approved May 8, 2023

CHAPTER NO. 470

[SB 373]

AN ACT REVISING LAWS RELATED TO TEACHER CERTIFICATION; ESTABLISHING ALTERNATIVE TEACHER CREDENTIALING; PROVIDING REQUIREMENTS FOR APPLICANTS SEEKING ALTERNATIVE CREDENTIALING AND FOR ALTERNATIVE TEACHER CERTIFICATION AND ENDORSEMENT PROGRAMS APPROVED BY THE BOARD OF PUBLIC EDUCATION UPON THE RECOMMENDATION OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AMENDING SECTION 20-4-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Alternative teacher credentialing. (1) The superintendent of public instruction shall issue a class 2 standard certificate to an applicant who meets all of the following requirements:

(a) the applicant holds a bachelor's degree from an accredited college or university;

(b) the applicant passes a criminal history background check in the manner prescribed under rules adopted by the board of public education;

(c) the applicant completes coursework related to Indian education for all, pursuant to Title 20, chapter 1, part 5, that is required of other class 2 standard certificate applicants under rules adopted by the board of public education; and

(d) the applicant has successfully completed an alternative teacher certification and endorsement program that includes the following:

(i) subject-area content training in the area in which the applicant seeks to be certified and endorsed; and

(ii) pedagogical training that covers effective instructional delivery, classroom management and organization, assessment, instructional design, and professional learning and leadership.

(2) An individual who successfully completes an alternative teacher certification and endorsement program and who is granted a class 2 standard certificate under this section:

(a) is authorized to teach the subjects and grade levels corresponding with the individual's completed alternative teacher certification and endorsement program; and

(b) may be required by the board of public education to participate in a district mentorship and induction program in the first year of full-time employment.

(3) The state shall treat an individual who successfully earns a class 2 standard certificate under this section in the same manner as an individual who completes a traditional teacher preparation program and is issued a class 2 standard certificate, including following the same process for certifications under 20-4-106 that require a class 2 standard certificate as a prerequisite to other certifications.

(4) For purposes of this part, the following definitions apply:

(a) "Alternative teacher certification and endorsement program" means a teacher certification and endorsement program that meets the requirements of this section, and has been approved by the board of public education upon recommendation of the superintendent of public instruction. The approval of an alternative teacher certification and endorsement program may not require a supervised teaching experience or licensure from another state or any characteristic except as provided in this section and must require either:

(i) affiliation with or status as a public or private institution of higher education; or

(ii) that the alternative teacher certification and endorsement program is accepted for teacher licensure in at least five states and has operated for at least 10 years.

(b) "Certification and endorsement" means the classifications of teacher and specialist certificates and the corresponding subject fields for endorsement according to the board of education policy for certification endorsement as referenced in 20-4-106.

Section 2. Section 20-4-104, MCA, is amended to read:

"**20-4-104. Qualifications.** (1) A person may be certified as a teacher when the person satisfies the following qualifications. The person:

(a) is 18 years of age or older;

(b) is of good moral and professional character;

(c) (i) has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and the training is evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d);

(ii) possesses a current certification from the national board for professional teaching standards; ~~or~~

(iii) possesses a current educator license from another state or country and successful experience as determined by the board of public education; *or*

(iv) has completed the alternative teacher certification and endorsement program provided for in [section 1]; and

(d) has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when the person satisfies the requirements of subsections (1)(a) and (1)(b) and the requirement for a specialist certificate provided in 20-4-106(2)."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 4, part 1, and the provisions of Title 20, chapter 4, part 1, apply to [section 1].

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

Approved May 8, 2023

CHAPTER NO. 471

[SB 391]

AN ACT PROVIDING FOR A PARTIAL SALARY PAYMENT OR THE REASSIGNMENT OF DETENTION OFFICERS INJURED IN THE PERFORMANCE OF DUTY; AND SUPERSEDING THE UNFUNDED MANDATE LAWS.

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

Section 1. Payment of partial salary of detention officer injured in performance of duty. (1) A detention officer who is injured in the performance of the detention officer's duties and who requires medical or other remedial treatment for injuries that render the detention officer unable to perform the detention officer's duties must be paid by the county the difference between the detention officer's net salary following adjustments for income taxes and pension contributions and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the detention officer must be unable to perform the detention officer's duties as a result of the injury.

Section 2. Assignment to light duty or other agency. (1) Whenever, in the opinion of the county and supported by a health care provider's opinion, the detention officer is able to perform specified types of light duty, payment of the officer's partial salary amount under [section 1] must be discontinued if the detention officer refuses to perform light duty when it is available and offered to the detention officer.

(2) The detention officer may be transferred to another department or agency within the county.

Section 3. Unfunded mandate laws superseded. The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

Section 4. Codification instruction. [Sections 1 and 2] are 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 [sections 1 and 2].

Approved May 8, 2023

CHAPTER NO. 472

[SB 392]

AN ACT REVISING DETERMINATION OF COURT COSTS FOR COAL MINE RECLAMATION; AMENDING SECTIONS 82-4-251 AND 82-4-252, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Equal application of court costs. (1) Unless the context requires otherwise, a court or administrative agency that issues a final order in an action pursuant to Title 82, chapter 4, part 2, may award the prevailing party reasonable costs of litigation, including filing fees, attorney fees, and witness costs.

(2) In awarding costs pursuant to this section, the court or administrative agency may not consider the identity of any party, including but not limited to a permittee, permit applicant, agency, public interest litigant, or other party to an action. The party requesting costs bears the burden of proof and persuasion.

(3) This section supersedes prior rulings pursuant to the private attorney general doctrine.

(4) The provisions of this section apply equally to all parties in an action pursuant to this part.

Section 2. Section 82-4-251, MCA, is amended to read:

"**82-4-251. Noncompliance -- suspension of permits.** (1) If it is determined on the basis of an inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part or any permit condition required by this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the director or an authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). If the director or an authorized representative finds that the ordered cessation of the operation or any portion of the operation will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, the director or the authorized representative shall, in addition to the cessation order, impose affirmative obligations requiring any steps that the director or the authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the director or an authorized representative shall issue a notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director or an authorized representative, the director or an authorized representative finds that the violation has not been abated, the director or an authorized representative shall immediately order a cessation of the operation or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or an authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the director shall determine

the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the director or an authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the director or an authorized representative also finds that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that the violations are willfully caused by the permittee, the director or an authorized representative shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. A permittee may request a contested case hearing on a permit suspension or revocation by filing a request for hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is requested, upon issuance of a final order by the board. The hearing must be conducted in accordance with the requirements of Title 2, chapter 4, part 6. When a permit has been revoked, the department may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to former permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section must set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section must be given promptly to the permittee or the permittee's agent by the department, by the director, or by the authorized representative who issued the notice or order. All notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the director or an authorized representative. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless an informal public hearing, if requested by the person to whom the notice or order was issued, is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the hearing. If the department receives a request for an informal public hearing 21 days after service of the notice or order, the period for holding the informal public hearing is extended by the number of days after the 21st day that the request was received.

(6) A person who has been issued a notice or an order of cessation pursuant to subsection (1) or (2) or a person who has an interest that is or may be adversely affected by an order issued pursuant to subsection (1) or (2) or by modification, vacation, or termination of that order may request a hearing

before the board on that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The board shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) ~~Whenever~~ *Subject to the provisions of [section 1], whenever* an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the director or an authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 3. Section 82-4-252, MCA, is amended to read:

"**82-4-252. Mandamus.** (1) A resident of this state or any person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest that is or may be adversely affected may bring an action of mandamus in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform the officer's or employee's duties. If the officer or employee fails to obey the order, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on the person's own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued under this part. However, the action may not commence:

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

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under this part. Any person may intervene as a matter of right in the civil action. This section does not restrict any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted under this part or to seek any other relief.

(4) Any person who is injured in person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may

bring an action for damages, including reasonable attorney and expert witness fees, only in the county in which the strip- or underground-coal-mining operation complained of is located. This subsection does not affect the rights established by or limits imposed under Title 39, chapter 71.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation, including attorney and expert witness fees, ~~to any party whenever the court determines that the award is appropriate~~ *pursuant to [section 1]*. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 1].

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

Section 7. Applicability. [This act] applies to court actions filed on or after [the effective date of this act].

Approved May 8, 2023

CHAPTER NO. 473

[SB 398]

AN ACT REVISING LAWS RELATED TO COORDINATE SYSTEMS; LIMITING THE USE OF MONTANA COORDINATE SYSTEM NAD 83; ADOPTING THE MONTANA PLANE COORDINATE SYSTEM; AND AMENDING SECTIONS 70-22-201, 70-22-203, 70-22-205, 70-22-206, AND 70-22-207, MCA.

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

Section 1. Limit on use of Montana coordinate system NAD 83. The Montana coordinate system NAD 83 may not be used to define the position of a point on a land boundary for any publicly recorded instrument more than 1 year after the date that SPCS2022 is adopted by NGS as an official part of the NSRS. The Montana plane coordinate system as defined by NGS or its successors is the sole system to be used after this date.

Section 2. Section 70-22-201, MCA, is amended to read:

"**70-22-201. Coordinate systems adopted -- designation -- division of state into zones.** (1) The North American datum systems of plane coordinates that have been established by the ~~national ocean survey~~ *national oceanic and atmospheric administration*/national geodetic survey (formerly the United States coast and geodetic survey) or a successor for defining and stating the positions or locations of points on the surface of the earth within the state of Montana are ~~hereafter~~ to be known and designated *from now on* as the "Montana coordinate system NAD 27"*,* ~~and~~ the "Montana coordinate system NAD 83*", and the "Montana plane coordinate system*".

(2) For the purpose of the use of the Montana coordinate system NAD 27, the state is divided into a north zone and a central zone and a south zone as provided in subsections (3) through (5).

(3) The area now included in the following counties shall constitute the north zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

(4) The area now included in the following counties shall constitute the central zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, McCone, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

(5) The area now included in the following counties shall constitute the south zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

(6) For the purpose of the use of the Montana coordinate system NAD 83, the state is a single zone.

(7) For the purpose of the use of the Montana plane coordinate system (MTPCS), the most recent system of plane coordinates that has been established by the national geodetic survey (NGS), or a successor, that is based on the North American terrestrial reference frame of 2022 (NATRF2022), or a successor, and the national spatial reference system (NSRS), or a successor, and known as the state plane coordinate system (SPCS), or a successor, for defining and stating the geographic positions or locations of points within the state must be known as the "Montana plane coordinate system"."

Section 3. Section 70-22-203, MCA, is amended to read:

"**70-22-203. Use of x- and y-coordinates.** (1) For the Montana coordinate system NAD 27, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the appropriate zone of this system ~~shall~~ *must* consist of two distances expressed in terms of a United States survey foot and decimals of a foot.

(2) For the Montana coordinate system NAD 83 *and all later Montana plane coordinate systems*, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the zone ~~shall~~ *must* consist of two distances expressed in either meters and decimals of a meter or in feet and decimals of a foot. The international conversion value (1 foot equals 0.3048 meters exactly) ~~shall~~ *must* be used. The unit of measure ~~shall~~ *must* be clearly stated when the coordinate values are expressed.

(3) One of the distances used to express a position or location, to be known as the "*east coordinate" or "*x-coordinate", ~~shall~~ *must* give the position in an east-and-west direction *from the y-axis*; the other, to be known as the "*north coordinate" or "*y-coordinate", ~~shall~~ *must* give the position in a north-and-south direction *from the x-axis. The y-axis of any zone must be parallel with the central meridian of that zone. The x-axis of any zone must be at a right angle to the central meridian of that zone.* These coordinates ~~shall~~ *must* be made to depend ~~upon~~ *on* and conform to plane rectangular coordinate values *derived from the NSRS* ~~for the monumented points of the North American horizontal geodetic control network as published~~ *as defined and promulgated* by the ~~national ocean survey~~ *national oceanic and atmospheric administration /* national geodetic survey or its successors and whose plane coordinates have been computed on the systems designated by this part. Any ~~such~~ station *with coordinates referenced to the NSRS* may be used for establishing a survey connection to ~~either~~ *the* Montana coordinate ~~system~~ *systems*."

Section 4. Section 70-22-205, MCA, is amended to read:

"**70-22-205. Technical description of zones.** For *the* purposes of more precisely defining the Montana coordinate systems NAD 27, ~~and~~ NAD 83, *and MTPCS,* the following description by the ~~national ocean survey~~ *national oceanic and atmospheric administration*/national geodetic survey (formerly the United States coast and geodetic survey) is adopted:

(1) The Montana coordinate system NAD 27, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51′ and 48° 43′, along which parallels the scale ~~shall~~ *must* be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 47° 00′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(2) The Montana coordinate system NAD 27, central zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27′ and 47° 53′, along which parallels the scale ~~shall~~ *must* be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 45° 50′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(3) The Montana coordinate system NAD 27, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52′ and 46° 24′, along which parallels the scale ~~shall~~ *must* be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 44° 00′ north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(4) The Montana coordinate system NAD 83 is a Lambert conformal conic projection of the GRS 80 (Geodetic Reference System 1980) ellipsoid, having standard parallels of north latitudes 45° 00′ and 49° 00′, along which parallels the scale ~~shall~~ *must* be exact. The origin of coordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 44° 15′ north latitude. This origin is given the coordinates: x = 600,000 meters and y = 0 meters.

(5) The Montana plane coordinate system must be the state plane coordinate system of 2022 (SPCS2022) or its most recent successor as defined by the national geodetic survey or its successor agency."

Section 5. Section 70-22-206, MCA, is amended to read:

"**70-22-206. Conformity to standards required for use of coordinates in recorded instrument.** Coordinates based on the ~~Montana coordinate system NAD 83~~ *Montana coordinate systems* purporting to define the position of a point on a land boundary may not be presented to be recorded in any public land records or deed records unless the coordinates have been ~~tied to or originated from monumented first-order or higher accuracy horizontal control points that are adjusted to and published as part of~~ *determined with respect to* the national spatial reference system *(NSRS) at an accuracy consistent with the relative accuracy of the land boundary as presented in the recorded instrument*. Public land or deed records presented for recording that purport to define the position of a point on a land boundary based on coordinates from the ~~Montana coordinate system NAD 83~~ *Montana coordinate systems* must contain a statement that identifies the ~~first-order or higher accuracy control stations used in the survey, the specific NAD 83 datum adjustment tag of the coordinates used, and the type of equipment and methods used to perform the survey.~~ *specific realization of the reference frame or datum of the coordinates, including the coordinate epoch date if applicable, along with the type of equipment and methods used to perform the survey and tie it to the NSRS.*"

Section 6. Section 70-22-207, MCA, is amended to read:

"**70-22-207. Use of term Montana coordinate system limited.** The use of the term "Montana coordinate system NAD 27 north, central, or south zone" ~~or~~, "Montana coordinate system NAD 83"*, or "Montana plane coordinate system"* on any map, report of survey, or other document ~~shall~~ *must* be limited to coordinates based on the Montana coordinate systems as defined in this part."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 22, part 2, and the provisions of Title 70, chapter 22, part 2, apply to [section 1].

Approved May 8, 2023

CHAPTER NO. 474

[SB 400]

AN ACT REVISING CONCEALED CARRY LAWS; EXTENDING THE TIME PERIOD A CONCEALED WEAPONS PERMIT IS VALID FROM 4 YEARS TO 5 YEARS; AND AMENDING SECTION 45-8-321, MCA.

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

Section 1. Section 45-8-321, MCA, is amended to read:

"**45-8-321. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for ~~4 years~~ *5 years* from the date of issuance. An applicant must be a United States citizen or permanent lawful resident who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration; or

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally disordered, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally disordered, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active

criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

Approved May 8, 2023

CHAPTER NO. 475

[SB 426]

AN ACT REVISING THE DEFINITION OF NATURAL GAS; AMENDING SECTION 15-36-303, 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 15-36-303, MCA, is amended to read:

"**15-36-303. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

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

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a wellbore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; or

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) commencing the recompletion of a well as a horizontally completed well;

(ii) expanding the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means *all* natural ~~gas~~ *gasses, hydrocarbon gasses, all forms of inert gas,* and other fluid hydrocarbons *as produced at the wellhead and not defined as oil under 82-1-111, except gasses used in tertiary oil production,* ~~other than oil, produced at the wellhead~~.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) (a) "Post-1999 stripper well" means an oil well drilled on or after January 1, 1999, that produces more than 3 barrels but fewer than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of crude oil reported and received by the producer for Montana oil marketed during a calendar quarter is less than $30. If the price

of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter.

(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.

(c) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.

(16) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(17) (a) "Pre-1999 stripper well" means an oil well that was drilled before January 1, 1999, that produces more than 3 barrels a day but fewer than 10 barrels a day.

(b) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.

(18) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(19) "Primary recovery" means the displacement of oil from the earth into the wellbore by means of the natural pressure of the oil reservoir and includes artificial lift.

(20) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(21) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

(22) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount

of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing wellbore; or

(ii) any other method approved by the board as a secondary recovery method.

(23) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(24) "Stripper well exemption" or "stripper well bonus" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less. Production from this type of well must be determined as provided in subsection (15)(c).

(25) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; and

(x) any other method approved by the board as a tertiary recovery method.

(26) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(27) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells. (Terminates December 31, 2021, 2022, 2023, and 2024, on occurrence of contingency until December 31, 2025--secs. 13, 14, Ch. 559, L. 2021.)

15-36-303. (Temporary -- effective on occurrence of contingency) Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

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

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a wellbore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; or

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) commencing the recompletion of a well as a horizontally completed well;

(ii) expanding the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means *all* natural ~~gas~~ *gasses, hydrocarbon gasses, all forms of inert gas,* and *all* other fluid hydrocarbons *as produced at the wellhead and not defined as oil under 82-1-111*~~, other than oil, produced at the wellhead~~.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(16) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(17) "Primary recovery" means the displacement of oil from the earth into the wellbore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(19) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing wellbore; or

(ii) any other method approved by the board as a secondary recovery method.

(21) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(22) (a) "Stripper oil" means the oil produced from any well that produces more than 3 barrels but fewer than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of west Texas intermediate crude oil during a calendar quarter is less than $30. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter.

(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.

(c) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.

(23) "Stripper well exemption" or "stripper well bonus" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less. Production from this type of well must be determined as provided in subsection (22)(c).

(24) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; and

(x) any other method approved by the board as a tertiary recovery method.

(25) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(26) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells.

15-36-303. (Effective January 1, 2026) Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

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

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will

result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a wellbore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; or

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) commencing the recompletion of a well as a horizontally completed well;

(ii) expanding the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means *all* natural ~~gas~~ *gasses, hydrocarbon gasses, all forms of inert gas,* and *all* other fluid hydrocarbons *as produced at the wellhead and not defined as oil under 82-1-111*~~, other than oil, produced at the wellhead~~.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) (a) "Post-1999 stripper well" means an oil well drilled on or after January 1, 1999, that produces more than 3 barrels but fewer than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of crude oil reported and received by the producer for Montana oil marketed during a calendar quarter is less than $30. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter.

(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.

(c) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.

(16) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(17) (a) "Pre-1999 stripper well" means an oil well that was drilled before January 1, 1999, that produces more than 3 barrels a day but fewer than 10 barrels a day.

(b) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.

(18) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(19) "Primary recovery" means the displacement of oil from the earth into the wellbore by means of the natural pressure of the oil reservoir and includes artificial lift.

(20) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(21) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

(22) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing wellbore; or

(ii) any other method approved by the board as a secondary recovery method.

(23) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the

calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(24) "Stripper well exemption" or "stripper well bonus" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less. Production from this type of well must be determined as provided in subsection (15)(c).

(25) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; and

(x) any other method approved by the board as a tertiary recovery method.

(26) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(27) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

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

Section 3. Applicability. [This act] applies to the future production of natural gas after [the effective date of this act].

Approved May 8, 2023

CHAPTER NO. 476

[SB 432]

AN ACT REQUIRING AN ANNUAL REPORT ON HELP AMERICA VOTE ACT FUNDS; ESTABLISHING REPORTING REQUIREMENTS; AMENDING SECTION 13-1-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-1-209, MCA, is amended to read:

"**13-1-209. Special account for federal Help America Vote Act.** (1) There is a federal special revenue account in the state treasury to the credit of the office of the secretary of state.

(2) Money provided to the state for the purposes of implementing provisions of Public Law 107-252, the Help America Vote Act of 2002, must be deposited in the account.

(3) Money in the account may be used only for the purposes specified by the federal law under which the money was provided.

(4) In accordance with 5-11-210 and by September 1 every year, the office of the secretary of state shall present a report to the state administration and veterans' affairs interim committee on how much money is received in the special account and how the funds are used."

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

Approved May 8, 2023

CHAPTER NO. 477

[SB 444]

AN ACT REVISING LAWS RELATED TO WORK-BASED LEARNING PROGRAMS; REQUIRING WRITTEN AGREEMENTS FOR WORK-BASED LEARNING PROGRAMS AND SPECIFIC ELEMENTS TO QUALIFY FOR EXEMPTION FROM CERTAIN WAGE LAWS; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Work-based learning programs -- requirements of agreements. (1) A work-based learning program operated in compliance with 20-7-1510 must include a written agreement executed by the pupil and the pupil's parent or guardian, the school in which the pupil is enrolled, and the work-based learning partner. The agreement must include:

(a) a provision prioritizing accommodation of the pupil's academic commitments by corresponding to the academic calendar and the pupil's course schedule;

(b) a provision for periodic assessment to ensure ongoing beneficial learning and to complete the work-based learning experience when beneficial learning is complete;

(c) a description of how the pupil's classroom activities and on-the-job experiences will be planned and supervised to ensure that both activities are structured as an educational environment; and

(d) a designation of the academic credit that will be awarded to the pupil through the pupil's participation in the work-based learning experience.

(2) To qualify for exclusion under 39-3-406(1)(a), the agreement must contain the following in addition to the requirements in subsection (1) of this section:

(a) a clear statement that there is no expectation of compensation;

(b) a confirmation that the pupil's involvement in the work-based learning experience complements, rather than displaces, the work of paid employees while providing significant educational benefits to the pupil; and

(c) a provision confirming that the work-based learning experience is conducted without entitlement to a paid job at the conclusion of the experience.

Section 2. 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, *including a work-based learning program operated in compliance with 20-7-1510 and [section 1(2)]*;

(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;

(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 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 3, and the provisions of Title 20, chapter 7, part 3, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2023.

Approved May 8, 2023

CHAPTER NO. 478

[SB 448]

AN ACT REGULATING UNATTENDED FIRES CONDUCTED UNDER FIRE HAZARD REDUCTION AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Fire hazard reduction agreement -- slash burning. (1) Slash burning as part of hazard reduction agreements must be conducted under rules adopted pursuant to this part and burning notification requirements adopted pursuant to 7-33-2205.

(2) Immediate or continuous presence is not required for slash burning conducted under this section provided that:

(a) significant precipitation, the presence of persistent snow cover, fuel moisture conditions, or a combination of those factors sufficiently inhibit the chance of fire spreading under current and foreseeable weather conditions;

(b) there is an absence of high wind events or warnings for the slash burning period that would cause the fire or embers to spread beyond the intended location;

(c) the slash burn location is sufficiently monitored, patrolled, or both until the risk of fire spread subsides. This includes at least one site visit to ensure containment.

(3) Nothing in this section absolves the holder of a fire hazard reduction agreement from operating with reasonable care and caution or the provisions of 50-63-102 and 50-63-103.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 13, part 4, and the provisions of Title 76, chapter 13, part 4, apply to [section 1].

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

Approved May 8, 2023

CHAPTER NO. 479

[SB 451]

AN ACT GENERALLY REVISING HEALTH CARE CONTRACT LAWS; PROHIBITING CONTRACTS THAT RESTRICT PRACTICE FOR CERTAIN HEALTH CARE PROVIDERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Prohibition of contracts that restrict practice -- applicability -- exceptions. (1) A contract that creates or establishes the terms of employment, a partnership, or any other form of professional relationship with a health care provider described in subsection (2), may not restrict the right of the health care provider to:

(a) practice or provide services for which the provider is licensed, in any geographic area and for any period, after the termination of the employment, partnership, or other form of professional relationship;

(b) treat, advise, consult with, or establish a provider-patient relationship with any current patient of the employer or with a patient affiliated with a partnership or other form of professional relationship; or

(c) solicit or seek to establish a provider-patient relationship with any current patient of the employer or with a patient affiliated with a partnership or other form of professional relationship.

(2) The requirements of subsection (1) apply to contracts or agreements involving the following health care providers:

(a) a psychiatrist or addiction medicine physician licensed under Title 37, chapter 3;

(b) a psychologist licensed under Title 37, chapter 17;

(c) a social worker licensed under Title 37, chapter 22;

(d) a professional counselor licensed under Title 37, chapter 23;

(e) an addiction counselor licensed under Title 37, chapter 35;

(f) a marriage and family therapist licensed under Title 37, chapter 37; and

(g) a behavioral health peer support specialist licensed under Title 37, chapter 38.

(3) This section does not apply to a contract in connection with the sale and purchase of a practice.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 7, and the provisions of Title 28, chapter 2, part 7, apply to [section 1].

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

Approved May 8, 2023

CHAPTER NO. 480

[SB 452]

AN ACT REVISING TRANSPORTATION COMMISSION AUTHORITY TO SET SPEED LIMITS; ALLOWING THE TRANSPORTATION COMMISSION TO REASSESS AND RESET SPEED LIMITS PREVIOUSLY SET BY THE TRANSPORTATION COMMISSION; AND AMENDING SECTION 61-8-309, MCA.

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

Section 1. Section 61-8-309, MCA, is amended to read:

"**61-8-309. Establishment of special speed zones and temporary special reduced speed limits -- engineering and traffic investigation.** (1) (a) (i) If the commission determines ~~upon~~ *on* 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, or on a highway corridor under its jurisdiction greater than 50 miles in length on which increased crash frequency or fatal crash data is observed, the commission may set a reasonable and safe special speed limit at that location or corridor. 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~~ *on* the results of the engineering and traffic investigation.

(ii) In the event of a vehicle emergency, adverse weather condition, or identification of another highway safety factor that warrants decreasing the speed limit for reasonable and safe travel, the commission may, in advance of the safety event, adopt localized geographic area temporary special reduced speed limits that are lower than a speed limit set by 61-8-303 or 61-8-312. The temporary special reduced speed limit becomes effective upon posting appropriate fixed or variable signs and shall remain in effect while the fixed or variable signs remain posted.

(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 an interstate highway 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:*

(a) ~~the authority~~ to set reduced nighttime speed limits on curves and other dangerous locations*; and*

(b) to reassess and reset speed limits set by the transportation commission pursuant to this section.

(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."

Approved May 8, 2023

CHAPTER NO. 481

[SB 454]

AN ACT GENERALLY REVISING LAWS RELATED TO PRIVATE SECURITY; REPEALING THE BOARD OF PRIVATE SECURITY; TRANSFERRING AUTHORITY FROM THE BOARD OF PRIVATE SECURITY TO A DEPARTMENT PROGRAM; ELIMINATING LICENSURE OF ALARM RESPONSE RUNNERS, BRANCH OFFICES OF PRIVATE SECURITY COMPANIES, AND RESIDENT MANAGERS OF PRIVATE SECURITY COMPANIES; REQUIRING THE DESIGNATION OF A MANAGER; COMBINING PROPRIETARY AND CONTRACT PRIVATE SECURITY COMPANIES INTO A SINGLE LICENSE TYPE; PROVIDING RULEMAKING AUTHORITY; REVISING DEFINITIONS; AMENDING SECTIONS 25-1-1104, 37-1-401, 37-60-101, 37-60-103, 37-60-104, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, 37-60-314, 37-60-320, 37-60-403, 37-60-404, 37-60-405, 37-60-407, 37-60-411, AND 45-8-338, MCA; AND REPEALING SECTIONS 2-15-1781, 37-60-201, 37-60-211, 37-60-302, AND 37-60-309, MCA.

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

Section 1. Section 25-1-1104, MCA, is amended to read:

"**25-1-1104. Handbook for process servers.** (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) The ~~board of private security, established in 2-15-1781,~~ *department of labor and industry* shall develop and administer an examination for applicants for registration as a process server based on the handbook.

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 2. Section 37-1-401, MCA, is amended to read:

"**37-1-401. Uniform regulation for licensing programs without boards -- definitions.** As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

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

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, *60,* 72, or 73; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 49, *60,* 72, or 73; or

(b) Title 50, chapter 39, 74, or 76."

Section 3. Section 37-60-101, MCA, is amended to read:

"**37-60-101. Definitions.** As used in this chapter, the following definitions apply:

~~(1) "Alarm response runner" means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.~~

~~(2)~~*(1)* "Armed" means ~~an individual who at any time wears, carries, or possesses a firearm~~ *an endorsement authorizing a private investigator or a private security guard to possess and use one or more firearms* in the performance of professional duties *according to training and reporting requirements prescribed by this chapter and department rule.*

~~(3)~~*(2)* "Armed carrier service" means ~~any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery~~ *a private security firm that provides the transport or the offer to transport items of value under an armed private security guard.*

~~(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual's duties.~~

~~(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual's duties.~~

~~(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.~~

~~(7) "Board" means the board of private security provided for in 2-15-1781.~~

~~(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.~~

~~(9) "Contract security company" means any person who undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.~~

~~(10)~~*(3)* "Department" means the department of labor and industry provided for in 2-15-1701.

~~(11)~~*(4)* (a) "Electronic security ~~company~~ *firm*" means a person who sells, installs, services, or maintains a security alarm system and who ~~undertakes to hire, employ, and provide alarm response runners and~~ *employs* security alarm installers ~~on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered~~.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

~~(12) "Firearms course" means the course approved by the board and conducted by a firearms instructor.~~

~~(13) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.~~

~~(14) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes against the United States or any state or territory of the United States.~~

~~(15)~~*(5)* "Licensee" means a person licensed under this chapter.

~~(16) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.~~

~~(17) "Person" means an individual, firm, company, association, organization, partnership, or corporation.~~

~~(18)~~*(6)* "Private investigator" means ~~a person other than an insurance adjuster~~ *an individual* who for any consideration makes or agrees to make any investigation ~~with reference~~ *relevant* to:

(a) crimes against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause *of* or responsibility for *any* fires, libels, losses, accidents, or injury to persons or property; or

(e) gathering evidence to be used before any court, board, officer, or investigating committee.

(7) "Private security firearms instructor" means an individual who instructs private investigators and private security guards in the use of firearms that may be used while performing professional duties.

(8) "Private security firm" means a person who provides one or more of the following:

(a) private security guard services;

(b) armed private security guard services; or

(c) armed carrier services.

~~(19)~~*(9)* "Private security guard" means an individual employed ~~or assigned duties~~ *by a private security firm* to protect ~~a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public~~ *persons or property or to direct public movement* in public areas.

~~(20)~~*(10)* "~~Process~~ *Registered process* server" means a person described in 25-1-1101~~(1)~~.

~~(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.~~

~~(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each office located in this state where the business of the licensee is conducted.~~

~~(23)~~*(11)* (a) "Security alarm installer" means an individual ~~who sells, installs, services, or maintains~~ *employed by an electronic security firm to sell, install, service, or maintain* security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts ~~and is employed by an electronic security company~~.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

~~(24)~~*(12)* (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

~~(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.~~

~~(26) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the person's duties and responsibilities.~~

~~(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess a firearm in the performance of the individual's duties.~~

~~(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess a firearm in the performance of those duties.~~"

Section 4. Section 37-60-103, MCA, is amended to read:

"**37-60-103. Purpose.** The purpose of this chapter is to ~~increase the levels of integrity, competency, and performance of security companies and their employees who are required to be licensed, firearms instructors, private investigators, and process servers to safeguard~~ *regulate the qualifications and standards of practice of private security firms, electronic security firms, private*

investigators, private security firearms instructors, private security guards, registered process servers, and security alarm installers to protect the public health, safety, and welfare ~~against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, private investigators, or process servers~~."

Section 5. Section 37-60-104, MCA, is amended to read:

"**37-60-104. Restrictions on ~~contract~~ *private* security ~~company and proprietary security organization~~ *firms.*** An employee of a ~~contract~~ *private* security ~~company or proprietary security organization~~ *firm* may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing that the employee has been hired or engaged to protect, guard, or watch."

Section 6. Section 37-60-105, MCA, is amended to read:

"**37-60-105. Exemptions.** (1) ~~Except as provided in subsection (2), this~~ *This* chapter does not apply to:

(a) ~~any one person~~ *an individual* employed singly and exclusively by ~~any one employer~~ *an employer other than a private security firm* in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

(b) ~~a person~~ *an individual*~~:~~

~~(i)~~ employed singly and exclusively by a retail merchant *as a private security guard*;

~~(ii) performing at least some work for the retail merchant as a private security guard; and~~

~~(iii) who has received training as a private security guard from the employer or at the employer's direction;~~

(c) an officer or employee of the United States, of this state, or of a political subdivision of the United States or this state while the officer or employee is engaged in the performance of official duties;

(d) ~~a person engaged exclusively in the business of obtaining and furnishing~~ *an individual who provides* information ~~as to~~ *about* the financial rating ~~of persons or as to the personal~~*, financial* habits*,* and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(e) an attorney ~~at law while performing duties as an attorney at~~ *engaged in the practice of* law;

(f) a *law student,* legal intern, paralegal, or legal assistant ~~employed by~~ *under the direction of* one or more ~~lawyers, law offices, governmental agencies, or other entities~~ *attorneys*;

~~(g) a law student who is serving a legal internship;~~

~~(h)~~*(g)* a collection agency or finance company ~~licensed to do business under the laws of this state, or an employee of a collection agency or finance company licensed in this state while acting within the scope of employment, while~~ making an investigation incidental to the business of the agency or company~~, including an investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent~~;

~~(i)~~*(h)* special agents employed by railroad companies~~, provided that the railroad company notifies the board that its agents are operating in the state~~;

~~(j)~~*(i)* insurers and insurance producers and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;

~~(k)~~*(j)* individuals engaged in the collection and examination of physical material for forensic purposes;

~~(l)~~*(k)* an insurance adjuster~~, as defined in 37-60-101~~ *who investigates insurance claims to determine the extent of liability under an insurance policy but does not engage in surveillance or investigate crime*

~~(m)~~*(l)* an internal investigator or auditor while making an investigation incidental to the business of the agency or company by which the investigator or auditor is singularly and regularly employed;

~~(n)~~*(m)* ~~a person~~ *an individual* who evaluates and advises management on personnel and human resource issues in the workplace;

(n) a confidential intermediary under 42-6-104; or

(o) a certified public accountant ~~with a license or permit to practice or a practice privilege under 37-50-314 or 37-50-325 to the extent that the person is~~ engaged in an investigation relating to the practice of accounting.

(2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."

Section 7. Section 37-60-202, MCA, is amended to read:

"**37-60-202. Rulemaking power.** The ~~board~~ *department* shall adopt and enforce rules:

(1) ~~fixing~~ *establishing* the qualifications ~~of resident managers, licensees, holders of identification cards, and process servers, in addition to those prescribed in Title 25, chapter 1, part 11, and in this chapter, necessary to promote and protect the public welfare~~ *for licensure and standards of practice for licensees under this chapter and for registered process servers under Title 25, chapter 1, part 11*;

~~(2) establishing, in accordance with 37-1-134, application fees for original licenses and identification cards, and providing for refunding of any fees;~~

~~(3) (a) requiring approval of the board prior to the establishment of branch offices of any licensee; and~~

~~(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);~~

~~(4) for the certification of private investigator, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;~~

~~(5) for the licensure of firearms instructors;~~

~~(6)~~*(2)* for the approval of weapons;

~~(7)~~*(3)* requiring licensees, except *registered* process servers, to file an insurance policy with the ~~board~~ *department*; and

~~(8)~~*(4)* providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the *experience or examination* requirements ~~for age, employment experience, or written examination~~."

Section 8. Section 37-60-301, MCA, is amended to read:

"**37-60-301. ~~License~~ *Private security license* required -- process server registration required -- *armed endorsement.*** (1) ~~(a) Except as provided in 37-60-105, it is unlawful for any~~ *Unless licensed under Title 37, chapter 1, and this chapter, a* person ~~to act as or perform the duties, as defined in 37-60-101, of a contract security company, a proprietary security organization,~~ *may not practice as:*

(a) a private security firm;

(b) an electronic security ~~company, a branch office~~, *firm;*

(c) a private investigator~~,~~*;*

(d) a security alarm installer~~, an alarm response runner, a resident manager,~~*;*

(e) a ~~certified~~ *private security* firearms instructor~~,~~*;* or

(f) a private security guard ~~without having first obtained a license from the board~~.

~~(b)~~*(2)* Except as provided in 25-1-1101(2), ~~it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board~~ *a person may not practice as a registered process server or use the title "registered process server" without a registration issued by the department.*

(3) A private investigator or a private security guard may not possess or use firearms while performing professional duties without meeting the qualifications specified by the department and maintaining a current armed endorsement from the department.

~~(2)~~*(4)* It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed*, registered, or endorsed* as ~~a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard~~ *any of the license types listed in subsections (1) through (3).*

~~(3)~~*(5)* A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

~~(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411.~~"

Section 9. Section 37-60-303, MCA, is amended to read:

"**37-60-303. ~~License or registration~~ *Private security services licensure* qualifications -- *fingerprinting -- insurance.*** (1) ~~Except as provided in subsection (7)(a), an~~ *An* applicant for licensure ~~under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and~~ *as a private investigator, private security firearms instructor, private security guard, registered process server, or security alarm installer* shall submit evidence *satisfactory to the department* that the applicant:

(a) is at least 18 years of age;

(b) ~~is a citizen of the United States or a legal, permanent resident of the United States~~ *has completed high school or equivalent education*;

(c) ~~has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted~~ *meets character and fitness for licensure as demonstrated by a lack of unprofessional conduct*; *and*

~~(d) has not been judicially declared incompetent by reason of any mental disease or disorder or, if so declared, has been fully restored;~~

~~(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;~~

~~(f) is of good moral character; and~~

~~(g)~~*(d)* ~~has complied with other experience qualifications as may be set by the rules of the board~~ *has successfully completed training, experience, and examination requirements as the department may prescribe by rule.*

~~(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:~~

~~(a) complete the requirements of a training program certified by the board and provide, on a form prescribed by the department, written notice of satisfactory completion of the training; and~~

~~(b) fulfill other requirements as the board may by rule prescribe.~~

~~(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:~~

~~(a) is at least 21 years of age;~~

~~(b) has at least a high school education or the equivalent;~~

~~(c) has not been dishonorably discharged from any branch of the United States military service; and~~

~~(d) has fulfilled any other requirements as the board may by rule prescribe.~~

~~(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.~~

~~(5) An applicant for a license as a private security patrol officer or private investigator who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.~~

~~(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.~~

(2) In accordance with 34 U.S.C. 40316, the department shall require private investigator, private security firearms instructor, private security guard, registered process server, and security alarm installer license applicants to submit a full set of fingerprints to obtain a national criminal history background check by the Montana department of justice and the federal bureau of investigation for the purposes of licensure.

~~(7)~~*(3)*~~(a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter~~ *An applicant for licensure as a private security firm* must*:*

(a) be ~~incorporated under the laws of this state or~~ *lawfully organized and registered with the secretary of state or otherwise* qualified to do business within this state ~~and must be licensed by the board or, if doing business as a process server, must be registered by the board.~~*; and*

(b) ~~Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board~~ *designate a manager to act as the primary contact between the firm and the department.*"

Section 10. Section 37-60-304, MCA, is amended to read:

"**37-60-304. ~~Licenses and registration -- application~~ *Application* form and content.** ~~(1) An application for a license or for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board.~~

~~(2)~~*(1)* An ~~application must be made under oath and must include:~~ *applicant for licensure under this chapter must complete an application on a form, pay a fee prescribed by the department, and include*

~~(a) the full name and address of the applicant;~~

~~(b) the name under which the applicant intends to do business;~~

~~(c) a statement as to the general nature of the business in which the applicant intends to engage;~~

~~(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard or registered as a process server;~~

~~(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;~~

~~(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and~~

~~(g)~~ other information, evidence, statements, or documents as may be prescribed by the rules of the ~~board~~ *department*.

~~(3) The board shall verify the statements in the application.~~

~~(4)~~*(2)* ~~The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation~~ *On verification of each applicant's qualifications and fitness for licensure, endorsement, or registration, the department shall issue a license, subject to the renewal and termination provisions of 37-1-141*"

Section 11. Section 37-60-314, MCA, is amended to read:

"**37-60-314. Nontransferability of license -- record changes.** (1) A license issued under this chapter is not transferable.

(2) A licensee shall notify the ~~board~~ *department* within 5 days of any change in its officers or directors, name, address, employment, or other material change in the information previously furnished or required to be furnished to the ~~board~~ *department* or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. ~~Upon~~ *On* the change or occurrence, the ~~board~~ *department* may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the ~~board~~ *department* may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

Section 12. Section 37-60-320, MCA, is amended to read:

"**37-60-320. Fees.** (1) The fees ~~prescribed by the board and~~ collected by the department must be deposited ~~into~~ *in* the state special revenue fund ~~for the use of the board~~ *established to administer the provisions of this chapter*, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department."

Section 13. Section 37-60-403, MCA, is amended to read:

"**37-60-403. Licensee advertising.** Every advertisement by a licensee soliciting or advertising business must contain the licensee's name, address, and license number as they appear in the records of the ~~board~~ *department*."

Section 14. Section 37-60-404, MCA, is amended to read:

"**37-60-404. Duty to maintain ~~employee~~ records.** Each ~~employer~~ *private security firm, electronic security firm, and private investigator* shall

maintain ~~a record containing information relative to the employer's employees that may be~~ *and produce, on department request, employment and training records as* prescribed by ~~the board~~ *department rule*."

Section 15. Section 37-60-405, MCA, is amended to read:

"**37-60-405. Approval of weapons.** The weapons to be carried by armed licensees or holders of identification cards as private security personnel or private investigators must be approved by the ~~board~~ *department*."

Section 16. Section 37-60-407, MCA, is amended to read:

"**37-60-407. Regulation of uniforms, badges, and equipment.** ~~(1) No licensee or officer, director, partner, manager, or employee of a licensee may wear, carry, or display a badge in connection with the activities of the licensee's business.~~

~~(2)~~*(1)* The ~~board is authorized to~~ *department shall* establish rules regulating uniforms ~~and any~~*, badges, identification cards,* emblems, patches, insignias, ~~and~~ *or other* devices that may be ~~either~~ worn or displayed on uniforms, vehicles, or equipment *used by any private security firm, electronic security firm, or private investigator*.

(2) The department shall design the rules to clearly distinguish any licensee conducting private security functions and avoid confusion with government law enforcement personnel."

Section 17. Section 37-60-411, MCA, is amended to read:

"**37-60-411. Penalties -- investigation -- enforcement -- review.** (1) Any person who violates any of the provisions of this chapter or who conspires with another person to violate any of the provisions of this chapter relating to licensure is guilty of a misdemeanor punishable by a fine of not more than $1,000, by imprisonment of not more than 1 year, or by both fine and imprisonment.

(2) The ~~board~~ *department* shall:

(a) gather evidence of violations of this chapter, and of any rule established pursuant to this chapter, by persons engaged in a business subject to licensure under this chapter who fail to obtain licenses; and

(b) furnish that evidence to prosecuting officers of any county or city.

(3) The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within the prosecutor's jurisdiction."

Section 18. Section 45-8-338, MCA, is amended to read:

"**45-8-338. Firearms certificates for qualified retired law enforcement officers.** (1) The purpose of this section is to establish a process for issuing proof of firearms qualifications to a resident of the state who is otherwise a qualified retired law enforcement officer as defined in 7-32-201, or a peace officer as defined in 46-1-202, under the Federal Law Enforcement Officers Safety Act of 2004, 18 U.S.C. 926B and 926C, for the purpose of satisfying the qualification requirements contained in that act.

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

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

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

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

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

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

Section 19. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-1781. Board of private security.
37-60-201. Organization -- meetings -- records.
37-60-211. Compensation of board members -- expenses.
37-60-302. Resident manager required.
37-60-309. Form of license and identification cards.

Approved May 8, 2023

CHAPTER NO. 482

[SB 455]

AN ACT GENERALLY REVISING LAWS RELATED TO REALTY REGULATION; REVISING THE COMPOSITION OF THE BOARD OF REALTY REGULATION; TRANSFERRING THE OVERSIGHT OF PROPERTY MANAGERS FROM THE BOARD OF REALTY REGULATION TO THE DEPARTMENT OF LABOR AND INDUSTRY; ESTABLISHING LICENSING REQUIREMENTS FOR PROPERTY MANAGERS; PROVIDING EXEMPTIONS; PROVIDING A PENALTY FOR FAILURE TO COMPLY WITH TRUST ACCOUNT REQUIREMENTS; REPEALING LICENSING AND REGISTRATION REQUIREMENTS FOR TIMESHARE SALES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-15-1757, 37-1-401, 37-51-102, 37-51-103, 37-51-204, 37-51-313, 37-51-321, AND 37-51-324, MCA; AND REPEALING SECTIONS 37-51-601, 37-51-602, 37-51-603, 37-51-605, 37-51-607, 37-51-608, 37-53-101, 37-53-102, 37-53-104, 37-53-201, 37-53-202, 37-53-203, 37-53-204, 37-53-205, 37-53-213, 37-53-301, 37-53-302, 37-53-303, 37-53-304, 37-53-305, 37-53-306, 37-53-307, 37-53-308, AND 37-53-506, MCA.

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

Section 1. Definitions. As used in [sections 1 through 8], unless the context clearly indicates otherwise, the following definitions apply:

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

(2) "Property manager" means an individual who engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate

located in this state without transfer of the title to the property. The term includes but is not limited to an individual who:

(a) engages in negotiations for the lease or sublease of any real estate or of the improvements on any real estate;

(b) promotes the lease, rental, exchange, or other disposition of real estate;

(c) assists in creating or completing real estate lease contracts;

(d) procures tenants;

(e) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease;

(f) makes the advertising of real property for lease available by public display to potential tenants;

(g) shows rental or lease properties to potential tenants;

(h) acts as a liaison between the owners of real estate and a tenant or potential tenant;

(i) generally oversees the inspection, maintenance, and upkeep of leased real estate;

(j) collects rents or attempts to collect rents;

(k) pays or receives a fee, commission, or other compensation for referral of the name of a prospective lessor or lessee; or

(l) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (2).

(3) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(4) "Trust account" means an account for real estate trust funds maintained at a depository institution from which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law.

Section 2. Department powers and duties -- rulemaking. (1) The department shall:

(a) license and renew the licenses of qualified applicants; and

(b) adopt rules related to:

(i) eligibility requirements and competency standards;

(ii) license fees; and

(iii) defining unprofessional conduct that is not included in 37-1-410.

(2) The department may:

(a) adopt rules necessary to implement the provisions of [sections 1 through 8]; and

(b) establish licensure requirements and procedures as appropriate.

Section 3. License required to manage property. A person may not practice as a property manager unless actively licensed under Title 37, chapter 1, and [sections 1 through 8].

Section 4. Exemptions from requirement of property manager license. (1) The property manager licensing provisions of [sections 1 through 8] do not apply to:

(a) the spouse of the property owner;

(b) the child, descendant of a child, sibling, parent, niece, nephew, aunt, or uncle of either the property owner or the spouse of the property owner;

(c) a person who leases no more than four residential real estate units;

(d) a person acting as attorney-in-fact under a power of attorney;

(e) an attorney at law in the performance of duties as an attorney;

(f) a person acting pursuant to a court order or a trustee;

(g) an officer of the state or a political subdivision in the conduct of official duties;

(h) a person acting as a manager of a housing complex for low-income individuals subsidized by any government agency or political subdivision of the United States;

(i) a person who receives reduced rent or salary, unless that person holds signatory authority on the trust account;

(j) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(k) a person employed on a salaried basis by only one person.

(2) A broker or salesperson licensed under Title 37, chapter 51, may act as a property manager. A salesperson may not act as a property manager without a supervising broker.

Section 5. Qualification of property manager applicants -- examination -- issuance of license. (1) An applicant for a property manager license must:

(a) be at least 18 years of age;

(b) have graduated from an accredited high school or completed an equivalent education as determined by the department;

(c) apply for licensure to the department;

(d) have successfully completed a course of education approved by the department; and

(e) have passed an examination prescribed by the department.

(2) The course of education must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

Section 6. Penalty for failure to comply with trust account requirements. (1) An employee of the department may issue a citation to a property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $1,000 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the department within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

Section 7. Property manager's office -- notice of change of address. A property manager shall maintain a designated physical office. The designated address of the property manager must be indicated on the property manager's license. The property manager shall notify the department of a new address within 10 days.

Section 8. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by [sections 1 through 8].

(2) A person seeking to collect compensation for the lease of real estate shall demonstrate licensure or exemption from licensure.

Section 9. Section 2-15-1757, MCA, is amended to read:

"**2-15-1757. Board of realty regulation.** (1) There is a board of realty regulation.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Five members must be licensed real estate brokers~~,~~ *or* salespeople~~, or property managers~~ who are actively engaged in the real estate business as a broker~~,~~ *or* a salesperson~~, or a property manager~~ in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker~~,~~ *or* a salesperson~~, or a property manager~~. The members must be residents of this state.

(3) The members shall serve staggered terms of 4 years. A member may not serve more than two consecutive terms or any portion of two consecutive terms.

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

Section 10. Section 37-1-401, MCA, is amended to read:

"**37-1-401. Uniform regulation for licensing programs without boards -- definitions.** As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

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

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, ~~or~~ 73*, or [sections 1 through 8]*; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 49, 72, ~~or~~ 73*, or [sections 1 through 8]*; or

(b) Title 50, chapter 39, 74, or 76."

Section 11. Section 37-51-102, MCA, is amended to read:

"**37-51-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's

decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(2) "Asset management" means management, oversight, or direct actions taken to maintain or transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to a foreclosure sale.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property;

(g) performs asset management services for real property in conjunction with the marketing or transfer of the property; or

(h) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (4).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

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

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" includes:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

~~(17) "Property manager" means an individual who for a salary, commission, or compensation of any kind or with the intent or expectation of receiving valuable consideration engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others without transfer of the title to the property. The term includes but is not limited to an individual who:~~

~~(a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to the property;~~

~~(b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the improvements on any real estate located in this state;~~

~~(c) engages in the business of promoting the lease, rental, exchange, or other disposition of real estate located in this state without transfer of the title to the property through the listing of the real estate in a publication issued primarily for this purpose;~~

~~(d) assists in creating or completing real estate lease contracts;~~

~~(e) procures tenants for owners of real estate located in this state;~~

~~(f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this state;~~

~~(g) makes the advertising of real property for lease available by public display to potential tenants;~~

~~(h) shows rental or lease properties to potential tenants;~~

~~(i) in conjunction with property management responsibilities, acts as a liaison between the owners of real estate and a tenant or potential tenant;~~

~~(j) in conjunction with property management responsibilities, generally oversees the inspection, maintenance, and upkeep of leased real estate belonging to others;~~

~~(k) in conjunction with property management responsibilities, collects rents or attempts to collect rents for any real estate located in this state;~~

~~(l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property manager for referral of the name of a prospective lessor or lessee of real property;~~

~~(m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or~~

~~(n) advertises or represents to the public that the individual is engaged in any of the activities referred to in this subsection (17).~~

~~(18)~~*(17)* "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(19)~~*(18)* "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

~~(20)~~*(19)* "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(21)~~*(20)* "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

~~(22)~~*(21)* "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

~~(23)~~*(22)* "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

~~(24)~~*(23)* (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

~~(25)~~*(24)* "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(26)~~*(25)* "Supervising broker endorsement" means an endorsement to a broker's license that is required of any licensed broker who supervises licensed salespersons performing real estate activity."

Section 12. Section 37-51-103, MCA, is amended to read:

"**37-51-103. Exemptions.** (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as specified in this section, must identify the person performing any of the acts as a real estate broker~~,~~ *or* a real estate salesperson~~, or a property manager~~. The licensing provisions of this chapter do not:

(a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) include in any way the services rendered by any attorney at law in the performance of the attorney's duties;

(d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate in a probate matter;

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

~~(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States; or~~

~~(i)~~*(h)* apply to a person performing any act with respect to the following types of land transactions:

(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;

(ii) condemnations; or

(iii) governmental or tribal permits~~.~~*; or*

(i) apply to property managers licensed under [section 5].

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business."

Section 13. Section 37-51-204, MCA, is amended to read:

"**37-51-204. Educational programs.** (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302, 37-51-303, ~~37-51-603,~~ and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

(4) Education information obtained electronically by the board or stored in the board's databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-306."

Section 14. Section 37-51-313, MCA, is amended to read:

"**37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent", and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the ability of the buyer to perform on any purchase offer;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations.

(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(a) the fact that the buyer is willing to pay more than the offered purchase price;

(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(c) factors motivating either party to buy or sell; and

(d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of ~~part 6 of this chapter~~ *[sections 5 through 7]*, other than those requirements for the licensing of property managers, and the rules adopted by the ~~board~~ *department* to govern licensed property managers.

(10) A licensed broker or salesperson must obtain an appropriate written buyer broker agreement or written listing agreement prior to performing the acts of a buyer agent or a seller agent. A licensed broker or salesperson who is acting as a buyer agent or a seller agent without a written buyer broker agreement or written listing agreement is nevertheless obligated to comply with the requirements of this chapter.

(11) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(12) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;

(iii) disclosure required by law or to prevent the commission of a crime;

(iv) the information being disclosed by someone other than the broker or salesperson; and

(v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(13) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Section 15. Section. 37-51-321, MCA, is amended to read:

"**37-51-321. Unprofessional conduct -- sanction of license.** (1) The following practices, in addition to the provisions of 37-1-316 and as provided in board rule, are considered unprofessional conduct for an applicant or a person licensed under this chapter:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection (1)(a).

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the licensee's possession when the money belongs to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) as a broker or a salesperson, negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) as a salesperson, representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) unless exempted, paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a ~~broker.~~ *broker or* a salesperson~~, or a property manager~~;

(t) conviction of a felony;

(u) failing to meet the requirements of ~~part 6 of this chapter~~ *[sections 5 through 7]* or the rules adopted by the board governing property management while managing properties for owners;

(v) failing to disclose to all customers and clients, including owners and tenants, the licensee's contractual relationship while managing properties for owners; or

(w) failing to maintain continuous professional liability insurance coverage that meets the requirements of 37-51-325.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(3) The license of a broker~~,~~ *or* salesperson~~, or property manager~~ who violates this section may be sanctioned as provided in 37-1-312."

Section 16. Section 37-51-324, MCA, is amended to read:

"**37-51-324. Penalty for failure to comply with trust account requirements.** (1) An employee of the department may issue a citation to a broker ~~or property manager~~ responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct."

Section 17. Repealer. The following sections of the Montana Code Annotated are repealed:

37-51-601. License required to manage property.
37-51-602. Exemptions from requirement of property manager license.
37-51-603. Qualification of property manager applicants -- examination -- issuance of license.
37-51-605. Property manager's office -- notice of change of address.
37-51-607. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees.
37-51-608. Penalties -- criminal -- civil.
37-53-101. Short title.
37-53-102. Definitions.
37-53-104. Rulemaking authority.

37-53-201. Registration of timeshare offering required.
37-53-202. Application for registration.
37-53-203. Notice of changes in timeshare offering.
37-53-204. Alternative filing documents.
37-53-205. Exemption from registration.
37-53-213. Waiver of liability.
37-53-301. Licensure of timeshare salespersons -- licensee duties.
37-53-302. Denial, suspension, or revocation of license or application.
37-53-303. Public offering statement.
37-53-304. Disclosure to purchaser -- cancellation of agreement.
37-53-305. Transfer of developer's interest.
37-53-306. Good faith requirement -- prohibited provisions.
37-53-307. Illegal practices.
37-53-308. Civil liability.
37-53-506. Criminal proceedings.

Section 18. Codification instruction. [Sections 1 through 8] are intended to be codified as a new chapter in Title 37, and the provisions of Title 37 apply to [sections 1 through 8].

Approved May 8, 2023

CHAPTER NO. 483

[SB 456]

AN ACT GENERALLY REVISING LAWS RELATED TO HEARING AID DISPENSERS; REORGANIZING AND CLARIFYING GENERALLY APPLICABLE ADMINISTRATIVE PROVISIONS; REMOVING REDUNDANT PROVISIONS; TRANSFERRING OVERSIGHT AUTHORITY FROM THE BOARD OF HEARING AID DISPENSERS TO A DEPARTMENT OF LABOR AND INDUSTRY PROGRAM; ELIMINATING REQUIRED LICENSURE OF A PERSON TO SELL OVER-THE-COUNTER HEARING AIDS, MEDICAL EVALUATION REQUIREMENTS, AND RIGHT TO CANCEL CONTRACT; EXTENDING RULEMAKING; AMENDING SECTIONS 37-1-401, 37-15-102, 37-15-103, 37-16-102, 37-16-103, 37-16-202, 37-16-301, 37-16-303, 37-16-402, 37-16-408, AND 37-16-411, MCA; AND REPEALING SECTIONS 2-15-1740, 37-16-201, 37-16-203, 37-16-304, 37-16-405, 37-16-406, AND 37-16-413, MCA.

WHEREAS, the United States Food and Drug Administration amended regulations effective October 17, 2022 (87 F.R. 50698, August 17, 2022), that preempt the Montana Code Annotated regulating the sale of over-the-counter hearing aids.

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

Section 1. Section 37-1-401, MCA, is amended to read:

"**37-1-401. Uniform regulation for licensing programs without boards -- definitions.** As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

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

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter *16,* 35, 72, or 73; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter *16,* 35, 49, 72, or 73; or

(b) Title 50, chapter 39, 74, or 76."

Section 2. Section 37-15-102, MCA, is amended to read:

"**37-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(2) "Audiology assistant" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(3) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

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

(5) "Facilitator" means a trained individual who is physically present with the patient and facilitates telehealth at the direction of an audiologist or speech-language pathologist. A facilitator may be but is not limited to an audiology assistant or a speech-language pathology assistant.

(6) "Over-the-counter hearing aid" has the definition specified in 21 CFR 800.30 in effect on January 1, 2023.

~~(6)~~*(7)* "Patient" means a consumer of services from an audiologist, a speech-language pathologist, a speech-language pathology assistant, or an audiology assistant, including a consumer of those services provided through telehealth.

~~(7)~~*(8)* "Practice of audiology" means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule and includes the *ordering,* selling, dispensing, and fitting of *over-the-counter hearing aids and prescription* hearing aids.

~~(8)~~*(9)* "Practice of speech-language pathology" means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

(10) "Prescription hearing aid" has the definition specified in 21 CFR 801.422 in effect on January 1, 2023. The term does not include an over-the-counter hearing aid.

~~(9)~~*(11)* "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

~~(10)~~*(12)* "Speech-language pathology assistant" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

~~(11)~~*(13)* "Telehealth" has the meaning provided in 37-2-305."

Section 3. Section 37-15-103, MCA, is amended to read:

"**37-15-103. Exemptions -- rulemaking.** (1) This chapter does not prevent a person licensed in this state under any other law from engaging in the profession or business for which that person is licensed.

(2) This chapter does not restrict or prevent activities of a speech-language pathology or audiology nature or the use of the official title of the position for which the activities were performed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) who are not licensed under this chapter may perform those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) This chapter does not restrict the activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of a supervised course of study, and a fee may not accrue directly or indirectly to the student. These students must be designated by the title "speech-language pathology or audiology intern", "speech-language pathology or audiology trainee", or a title clearly indicating the training status appropriate to the level of training.

(5) This chapter does not restrict a person from another state from offering speech-language pathology or audiology services in this state if the services are performed for not more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter may offer speech-language pathology or audiology services in this state for not more than

30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) This chapter does not restrict a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person qualifies.

(7) This chapter does not restrict a person who is licensed in this state as a hearing aid dispenser from performing the functions for which the person qualifies and that are described in Title 37, chapter 16.

(8) (a) An audiologist who *orders,* sells, dispenses, or fits *prescription* hearing aids is exempt from the licensing requirements or other provisions of Title 37, chapter 16~~, except for the provisions of 37-16-304~~.

(b) The board may adopt rules pertaining to the selling, dispensing, and fitting of *prescription* hearing aids and *prescription* hearing aid parts, attachments, and accessories."

Section 4. Section 37-16-102, MCA, is amended to read:

"**37-16-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1740.~~

~~(2)~~*(1)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.~~

~~(4) "License" means a regular or trainee license.~~

(2) "Licensed hearing aid dispenser" is an individual who orders, fits, sells, and dispenses prescription hearing aids.

(3) "Over-the-counter hearing aid" has the definition specified in 21 CFR 800.30 in effect on January 1, 2023.

~~(5)~~*(4)* "Permanent place of business" means the primary site in this state at which a person licensed under this chapter conducts testing and fitting of *prescription* hearing aids and related devices ~~and that is open to the public at least 5 days a week~~.

~~(6) "Place of practice" means either a permanent place of business or a location on record with the department at which a person licensed under this chapter makes occasional visits. A place of practice must be affiliated with a permanent place of business.~~

~~(7)~~*(5)* "Practice of *ordering,* selling, dispensing, and fitting *prescription* hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent *ordering,* selection, adaption, sale, dispensing, or fitting of *prescription* hearing aids intended to compensate for hearing loss, including eyeglass *prescription* hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories.

(6) "Prescription hearing aid" has the definition specified in 21 CFR 801.422 in effect on January 1, 2023. The term does not include an over-the-counter hearing aid."

Section 5. Section 37-16-103, MCA, is amended to read:

"**37-16-103. Exemptions.** This chapter does not apply to a person who is:

(1) a physician licensed to practice by the state board of medical examiners;

(2) engaged in the practice of fitting *prescription* hearing aids if the person's practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency; or

(3) licensed as an audiologist under the provisions of Title 37, chapter 15~~, except that the provisions of 37-16-304 apply to licensed audiologists~~."

Section 6. Section 37-16-202, MCA, is amended to read:

"**37-16-202. Powers and duties -- *licensed hearing aid dispenser program*.** ~~(1) The powers and duties of the board are to~~ *The department may*:

~~(a) license persons who apply and are qualified to practice the fitting of hearing aids;~~

~~(b) establish a procedure to initiate or receive, investigate, and process complaints from any source concerning the activities of persons licensed under this chapter;~~

~~(c)~~*(1)* adopt rules necessary to carry out this chapter;

~~(d)~~*(2)* require the periodic inspection and calibration of audiometric testing equipment; *and*

~~(e) initiate legal action to enjoin from operation a person engaged in the sale, dispensing, or fitting of hearing aids in this state that is not licensed under this chapter;~~

~~(f) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411; and~~

~~(g)~~*(3)* ~~establish and~~ adopt minimum requirements for the form of bills of sale and receipts.

~~(2) Rules adopted by the board pursuant to subsection (1)(f) may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411.~~"

Section 7. Section 37-16-301, MCA, is amended to read:

"**37-16-301. Permanent place of business in state necessary -- records -- notice -- designation of licensee in charge.** (1) A ~~person who is actively engaged in dispensing hearing aids and related devices as a business~~ *licensed hearing aid dispenser* must have a permanent place of business in this state ~~that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids and related devices. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one hearing aid dispenser licensee may work from a permanent place of business~~.

~~(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to the person at the address last given to the department.~~

~~(3) All licensed hearing aid dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.~~

~~(4)~~*(2)*~~(a) When licensed hearing aid dispensers and trainees work at the same permanent place of business, the licensed hearing aid dispenser~~ *Each permanent place of business* shall designate one licensed *hearing aid* dispenser *who is not a trainee* as the person in charge. ~~There must be one licensed dispenser in charge at a permanent place of business.~~

~~(b)~~*(3)* The licensed hearing aid dispenser in charge of a permanent place of business *shall*:

~~(i) is responsible and accountable under the disciplinary authority of the board for the conduct of trainees using that permanent place of business; and~~

~~(ii)~~*(a)* ~~has~~ *maintain* custody and control of the business records of that permanent place of business ~~and is responsible for producing the records during an investigation conducted by the department~~*;*

(b) produce the business records as requested by the department; and

(c) notify the department in writing of any change of address in the permanent place of business within 30 days."

Section 8. Section 37-16-303, MCA, is amended to read:

"**37-16-303. Bill of sale ~~-- medical evaluation requirements -- waiver.~~** ~~(1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall~~ *A licensed hearing aid dispenser shall*, upon the sale of a *prescription* hearing aid ~~or related device~~, deliver to the customer a bill of sale that must contain:

~~(a)~~*(1)* the seller's signature and license number, the name and address of the seller's permanent place of business, and, if different from the permanent place of business, the address ~~of the place of practice at which~~ *where* the sale was concluded;

~~(b)~~*(2)* a description of the make and type of the *prescription* hearing aid or related device furnished and the amount charged;

~~(c)~~*(3)* any warranty or ~~guaranty and the right to cancel, as well as the terms of the warranty or guaranty and the right to cancel~~ *return policy provided or the lack of any warranty or return policy*;

~~(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;~~

~~(e) a provision that maintenance service for the hearing aid or related device is available; and~~

(4) the right to cancel, if applicable, under Title 30, chapter 14, part 5; and

~~(f)~~*(5)* the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids ~~and related devices~~, contact the ~~state Board of~~ *State of Montana* Hearing Aid Dispensers *Program*." The statement must also list the current ~~telephone number~~ *website address* and *mailing* address of the ~~board's office~~ *department*.

~~(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss.~~

~~(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at 21 CFR 801.420 and 21 CFR 801.421.~~"

Section 9. Section 37-16-402, MCA, is amended to read:

"**37-16-402. ~~Application~~ *Hearing aid dispenser license required* -- qualifications -- fee.** *(1)* An applicant for a license shall pay a fee fixed by the ~~board and commensurate with the costs of processing and administering the application and related functions of the board~~ *department* and shall show to the satisfaction of the ~~board~~ *department* that the applicant:

~~(1) is a person of good moral character;~~

~~(2)~~*(a) has a current license as an audiologist under Title 37, chapter 15; or*

(b) (i) has ~~an education equivalent to a 4-year course in an accredited~~ *a* high school *diploma or equivalent;* ~~or holds a current license as an audiologist under Title 37, chapter 15;~~

(ii) meets training requirements established by department rule; and

~~(3)~~*(iii)* ~~is free of contagious or infectious disease~~ *has passed an examination prescribed by department rule.*

(2) An applicant who has not met the training and examination requirements in this section may apply for a trainee hearing aid dispenser license as prescribed in this chapter and department rule."

Section 10. Section 37-16-408, MCA, is amended to read:

"**37-16-408. Deposit of fees, fines, and costs.** Fees, fines, and costs collected under this chapter, except those collected by a justice's court, must be deposited in the state special revenue fund for the use of the ~~board~~ *department*, subject to appropriations and 37-1-101(6)."

Section 11. Section 37-16-411, MCA, is amended to read:

"**37-16-411. Revocation or suspension of license -- investigations -- fines.** (1) The ~~board~~ *department* may, at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this chapter or ~~board~~ *department* rules, the ~~board~~ *department* may institute a proceeding pursuant to the provisions of ~~37-1-136 and 37-1-137~~ *37-1-403*.

(2) A licensee or license applicant may be sanctioned as provided in ~~37-1-312~~ *37-1-406* for ~~any of the following causes:~~ *unprofessional conduct defined in 37-1-410 or department administrative rules.*

~~(a) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court for the district where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for imposing sanctions.~~

~~(b) securing a license under this chapter through fraud, deceit, or false statements;~~

~~(c) the personal use of a false name or alias in professional practice;~~

~~(d) violating any of the provisions of this chapter;~~

~~(e) obtaining a fee or making any sale by fraud or misrepresentation;~~

~~(f) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;~~

~~(g) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, that is improbable, misleading, deceptive, or untruthful;~~

~~(h) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids and related devices if that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other similar words, abbreviations, or symbols that tend to connote the medical profession when that use is not accurate;~~

~~(i) permitting another to use a license or certificate;~~

~~(j) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;~~

~~(k) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in~~

~~a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;~~

~~(l) unethical conduct or gross incompetence or negligence in the performance of professional duties, including repeated failure to make indicated medical referrals of customers;~~

~~(m) selling a hearing aid or related device to a person who has not been given tests using appropriate established procedures and instrumentation in fitting hearing aids or related devices, except for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;~~

~~(n) falsifying hearing test or evaluation results or any associated client records;~~

~~(o) refusing to cooperate with an investigation by the board by:~~

~~(i) failing to furnish requested records or documents;~~

~~(ii) failing to furnish a complete explanation of matters referred to in the complaint;~~

~~(iii) failing to respond to a subpoena issued by the board;~~

~~(iv) willfully misrepresenting any relevant fact to a board investigator; or~~

~~(v) attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery.~~"

Section 12. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-1740. Board of hearing aid dispensers.
37-16-201. Meetings -- organization.
37-16-203. Compensation of members -- expenses.
37-16-304. Right to cancel -- return of hearing aid or related device -- notice -- refund -- dispensing fee rules.
37-16-405. Trainee license.
37-16-406. Admission of licensees from other states.
37-16-413. Penalty for unlawful practice -- injunction.

Approved May 8, 2023

CHAPTER NO. 484

[SB 457]

AN ACT REVISING LAWS RELATED TO THE BOARD OF SANITARIANS; TRANSFERRING THE AUTHORITY OF THE BOARD OF SANITARIANS TO THE DEPARTMENT OF LABOR AND INDUSTRY; REPEALING THE BOARD OF SANITARIANS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-1-401, 37-40-101, 37-40-203, 37-40-302, AND 37-40-312, MCA; AND REPEALING SECTIONS 2-15-1751, 37-40-201, AND 37-40-202, MCA.

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

Section 1. Section 37-1-401, MCA, is amended to read:

"**37-1-401. Uniform regulation for licensing programs without boards -- definitions.** As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

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

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, or 73; or

(b) Title 50, chapter 39, *40,* 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, *40,* 49, 72, or 73; or

(b) Title 50, chapter 39, 74, or 76."

Section 2. Section 37-40-101, MCA, is amended to read:

"**37-40-101. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

~~(1) "Board" means the board of sanitarians provided for in 2-15-1751.~~

~~(2)~~*(1)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(3)~~*(2)* "Practice the profession of sanitarian" means:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

~~(4)~~*(3)* "Registered sanitarian" means a sanitarian licensed under this chapter.

~~(5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of the person's special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, or enforcement duties, is qualified to practice the profession of sanitarian.~~

~~(6) "Sanitarian-in-training" means a person who meets the minimum educational qualifications required for a sanitarian's license and who works under the supervision of a licensed sanitarian. Sanitarians-in-training may, with board approval, work in a public health agency for a period not to exceed 1 year and be considered exempt from the licensing and registration requirements of 37-40-301.~~"

Section 3. Section 37-40-203, MCA, is amended to read:

"**37-40-203. Rulemaking power.** (1) The ~~board~~ *department* may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

~~(2) The board's rulemaking and hearing functions must be in accordance with the Montana Administrative Procedure Act. The board shall adopt rules:~~

~~(a) establishing standards of professional conduct in order to maintain a high standard of integrity, dignity, and competency in the profession of sanitarian, including competency in specific fields of sanitation;~~

~~(b) governing the conduct of matters before the board;~~

(2) The department shall adopt rules:

~~(c)~~*(a)* governing educational equivalency requirements, as provided in 37-40-302, for registration of sanitarians; and

~~(d)~~*(b)* defining qualifications for sanitarian-in-training status for issuance of the initial permit."

Section 4. Section 37-40-302, MCA, is amended to read:

"**37-40-302. Application -- examination -- certificate.** (1) A person wishing to practice the profession of sanitarian may apply to the department ~~for registration~~ on a form furnished by the department.

(2) An applicant must have a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college.

(3) If the applicant meets the ~~board's~~ *department's* standards and passes the examination prescribed by the ~~board~~ *department*, the department shall issue a certificate of registration.

(4) A holder of a current certificate is entitled to append to the holder's name the initials "R.S."."

Section 5. Section 37-40-312, MCA, is amended to read:

"**37-40-312. Penalty.** (1) A person who offers the person's services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that the person is a registered sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or by imprisonment for not longer than 6 months, or both.

(2) The ~~board~~ *department* may enforce the provisions of this chapter by injunction or any other appropriate proceeding."

Section 6. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-1751. Board of sanitarians.
37-40-201. Presiding officer -- meetings.
37-40-202. Compensation -- expenses.

Approved May 8, 2023

CHAPTER NO. 485

[SB 491]

AN ACT PROHIBITING A PERSON FROM INSTITUTING CERTAIN LAWSUITS IF THE PERSON WAS HARMED WHILE ATTEMPTING TO ENGAGE IN, ENGAGING IN, OR FLEEING AFTER HAVING ENGAGED IN A FELONY OFFENSE.

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

Section 1. Prohibition on lawsuit -- criminal actions. A person who is harmed while attempting to engage in, engaging in, or fleeing after having engaged in conduct that is classified as a felony offense may not recover damages from a crime victim or other person that used reasonable self-defense to protect a crime victim.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved May 8, 2023

CHAPTER NO. 486

[HB 567]

AN ACT REVISING TRAINING REQUIREMENTS FOR INSURANCE NAVIGATORS; ACCEPTING COMPLETION OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES TRAINING FOR NAVIGATOR CERTIFICATION; AMENDING SECTIONS 33-17-241 AND 33-17-242, MCA A; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-17-241, MCA, is amended to read:

"**33-17-241. Navigator certification -- duties -- prohibitions.** (1) An individual or an individual performing navigator duties on behalf of an organization serving as a navigator may not act in the capacity of a navigator unless the individual has met all of the following requirements, as applicable:

(a) is at least 18 years of age;

(b) has completed and submitted the application form provided for in 33-17-242 and has declared, under penalty of refusal, suspension, or revocation of the navigator's certification, that the statements made in the form are true, correct, and complete to the best of the applicant's knowledge and belief;

(c) has completed a background examination as described in 33-17-220;

~~(d) has successfully completed the navigator certification and training requirements adopted by the commissioner, as provided in 33-17-242; and~~

(d) has documentation of successful completion of the centers for medicare and medicaid services navigator certification training requirements or navigator recertification training requirements, as applicable; and

(e) has paid all fees required by 33-2-708.

(2) A navigator's duties may include any of the following:

(a) conducting public education activities to raise awareness of the availability of qualified health plans;

(b) distributing fair and impartial general information concerning how to enroll in any qualified health plan offered within the exchange and the availability of the premium tax credits under 26 U.S.C. 36B and the cost-sharing reductions provided under 42 U.S.C. 18071;

(c) assisting consumers in understanding how to enroll in a qualified health plan through an exchange or appropriate public programs offering health care coverage, without suggesting that the consumer purchase any particular plan; and

(d) referring consumers to the commissioner's office for assistance with complaints, appeals, or grievances or for general information about health insurance.

(3) A navigator may not do any of the following unless the navigator is otherwise licensed or authorized to do so under this chapter:

(a) sell, solicit, or negotiate health insurance;

(b) recommend, endorse, or offer opinions about the benefits, terms, or features of a particular health benefit plan or offer an opinion about which health benefit plan is better or worse for a particular individual or employer;

(c) provide any information or services related to a health benefit plan or another product not offered in the exchange;

(d) engage in any unfair method of competition or any fraudulent, deceptive, or dishonest act or practice; or

(e) enroll an individual or an employee in a qualified health plan offered through an exchange."

Section 2. Section 33-17-242, MCA, is amended to read:

"**33-17-242. Commissioner's duties -- navigator certification ~~and training program~~ -- training for certified application counselors and others.** (1) The commissioner shall:

(a) develop a navigator certification application form that requires an applicant to disclose potential conflicts of interest and any other information the commissioner considers relevant; *and*

~~(b) establish a navigator certification and training program for a prospective navigator and the navigator's employees;~~

~~(c) approve courses and the number of hours required for the navigator certification and training program;~~

~~(d) approve courses for continuing education covering 10 hours in every 24-month period; and~~

~~(e)~~*(b)* certify an applicant ~~qualified under~~ *meeting the requirements of* 33-17-241(1) ~~upon the applicant's successful completion of the navigator certification and training program approved by the commissioner~~.

(2) The commissioner may suspend, revoke, or refuse to issue or renew the navigator certification of a person that has committed an act for which the grounds for denial, suspension, or revocation are described in 33-17-1001 regarding an insurance producer's license.

(3) The commissioner may not certify as a navigator an individual, organization, or business entity that is receiving financial compensation, including monetary or in-kind compensation, gifts, or grants, from an insurer. A navigator certification must be revoked if the navigator receives financial compensation as described in this subsection from an insurer.

~~(4) The navigator certification and training program established in subsection (1) must include:~~

~~(a) a background examination as provided in 33-17-220;~~

~~(b) initial training on compliance with all applicable state and federal laws affecting major medical health insurance, exchanges, and qualified health plans;~~

~~(c) continuing education as provided in subsection (1)(d); and~~

~~(d) an examination.~~

~~(5)~~*(4)* The commissioner may prescribe training for an application counselor provided for in federal rule and other persons who while not part of the navigator program assist those who sign up for an exchange. The commissioner may require completion of the training before certification by the exchange. The training must be designed for those who assist applicants seeking to enroll in coverage through the exchange."

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

Approved May 9, 2023

CHAPTER NO. 487

[HB 635]

AN ACT ESTABLISHING A LANDOWNER PREFERENCE POOL FOR CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES; ALLOWING PURCHASE OF AN ADDITIONAL BONUS POINT FOR CERTAIN NONRESIDENT LANDOWNERS; PROVIDING RULEMAKING AUTHORITY; 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. Landowner preference for Class B-10 nonresident big game combination license. (1) Subject to the provisions of subsection (6), 15% of licenses issued under 87-2-505 may be placed in a landowner preference pool for nonresident landowners to hunt only on property the landowner owns in fee title or on other private property the landowner leases to produce a crop as defined in 80-8-102.

(2) A nonresident landowner of record may designate an immediate family member to receive the license issued under this section. For purposes of this section, an immediate family member means a spouse, parent, grandparent, child, grandchild, sibling, niece, or nephew of the landowner by blood, marriage, or legal adoption.

(3) (a) To qualify to receive a Class B-10 license pursuant to this section, the landowner must own at least 2,500 contiguous acres in fee title. Subject to the provisions of subsections (3)(b) and (5), for each additional 2,500 contiguous acres owned by the landowner, the department may issue to the landowner or the landowner's immediate family members an additional Class B-10 license up to a maximum of five Class B-10 licenses per qualifying landowner.

(b) An individual may not hold more than one Class B-10 license.

(4) Applicants must pay the full Class B-10 license fee established in 87-2-505.

(5) If there is a sufficient number of licenses set forth in subsection (1) and multiple applications made per qualifying landowner, the department shall issue one license to each qualifying landowner or the landowner's immediate family member before it issues a second or subsequent license to any landowner or the landowner's immediate family member. All Class B-10 licenses not issued pursuant to this section shall be returned to the general draw pool available to all applicants pursuant to 87-2-505.

(6) The commission may, by rule, limit the overall number of licenses that can be provided to landowners or their immediate family members pursuant to this section to less than 15% of those available pursuant to 87-2-505.

(7) A landowner who receives a license pursuant to this section and who was enrolled in a department-administered private land hunting access program in the previous license year may purchase an additional bonus point for an elk or deer license or permit drawing for the fee established in 87-2-113.

Section 2. 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) Nonresidents applying to purchase a Class B-10 or Class B-11 license may purchase a preference point, upon payment of a nonrefundable $100 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 except a nonresident hunting with an outfitter licensed pursuant to Title 37, chapter 47, part 3, and providing the documentation required in subsection (8), may purchase two preference points per license year. No applicant may accumulate more than three preference points total.

(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 December 31 of that license year.

(4) (a) The department shall delete an applicant's accumulated preference points if the applicant:

(i) obtains a Class B-10 or Class B-11 license; or

(ii) does not apply for a Class B-10 or Class B-11 license in consecutive years.

(b) If an applicant is unsuccessful in drawing a Class B-10 or Class B-11 license, the department shall allow the applicant to keep and apply preference points to subsequent drawings if done in consecutive years.

(5) ~~The~~ *Subject to the provisions of [section 1], 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~~ *Subject to the provisions of [section 1], 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 calculate the average rounded to the third decimal place.

(8) A nonresident purchasing a second preference point pursuant to subsection (3)(a) shall provide written affirmation at the time of application indicating the name and license number of the outfitter with whom the person intends to hunt. If the nonresident obtains the license applied for with the preference points purchased pursuant to subsection (3)(a), the nonresident may only use the license when accompanied by an outfitter or the outfitter's designee licensed to provide guiding services.

(9) (a) Fees collected from a nonresident purchasing a second preference point pursuant to subsection (3)(a) must be allocated as follows:

(i) 25% to public access land agreements established pursuant to 87-1-295;

(ii) 25% to hunting access programs established pursuant to 87-1-265;

(iii) 25% to the future fisheries program established in 87-1-272 with a priority given to funding projects that provide public access through private property; and

(iv) 25% to the purchase of permanent easements through private property to access otherwise inaccessible lands. An easement funded by this subsection (9)(a)(iv) may be granted only across private land to public land that is leased by the landowner, public land for which there is no leaseholder, or public land for which the landowner has consent of the leaseholder.

(b) The department may expend up to 10% of the revenue allocated pursuant to subsection (9)(a) to pay administrative costs incurred by the department for the purposes outlined in subsection (9)(a), including but not limited to contracting and transaction costs incurred by the department or entities partnering with the department, and for providing support to the private land/public wildlife advisory committee for its review of public access land agreements pursuant to 87-1-295.

(c) At the end of each fiscal year, funds allocated pursuant to subsection (9)(a) that remain unobligated are available to the department for any purpose pursuant to 87-1-201(3)."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87, chapter 2, part 7, apply to [section 1].

Section 4. Effective date. [This act] is effective March 1, 2024.

Approved May 9, 2023

CHAPTER NO. 488

[HB 544]

AN ACT PROVIDING REQUIREMENTS FOR COVERAGE OF PHYSICIAN SERVICES FOR ABORTION UNDER THE MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAMS; PROVIDING FOR PRIOR AUTHORIZATION; PROVIDING THAT ONLY ABORTION SERVICES PROVIDED BY A PHYSICIAN ARE COVERED SERVICES; AMENDING SECTION 53-4-1005, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Abortion coverage. (1) Coverage under the Montana medicaid program for physician services for abortion is allowed only if the abortion is performed by a physician and only if:

(a) the life of the mother will be endangered if the fetus is carried to term;

(b) the pregnancy is the result of an act of rape or incest; or

(c) the abortion is medically necessary.

(2) To receive medicaid reimbursement for physician services for an abortion described in subsection (1)(a), a physician shall certify that the woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would place the woman in danger of death unless an abortion is performed.

(3) To receive medicaid reimbursement for physician services for an abortion described in subsection (1)(c), a physician shall certify that, although the woman is not in danger of death unless an abortion is performed, the woman suffers from:

(a) a physical condition that would be significantly aggravated by the pregnancy; or

(b) a severe mental illness or intellectual disability that would be significantly aggravated by the pregnancy.

(4) Prior authorization is required for physician services for abortion. If prior authorization is not obtained because of an emergency, a claim for payment must undergo post-service, prepayment review. Prior authorization is not required for treatments for incomplete abortion, miscarriage, or septic abortion.

(5) The following supporting documentation must be submitted for an abortion described in subsection (1)(a) or (1)(c), either with the prior authorization request or with any claim for payment for which prior authorization was not received:

(a) the woman's medical history, including:

(i) age, current medications, medical conditions, and allergies;

(ii) number of pregnancies and number of live births;

(iii) last menstrual period and the status and results of any pregnancy test;

(iv) chronic illnesses and surgeries;

(v) behavioral health issues;

(vi) smoking and substance abuse; and

(vii) obstetric history;

(b) a brief review of systems to identify symptoms the woman may be experiencing;

(c) the results of a physical examination, including vital signs, heart, lungs, abdomen, extremities, and, if imaging is not available, estimate of gestational age;

(d) if available, results of laboratory tests, including rh factor, hemoglobin, and human chorionic gonadotropin;

(e) if available, imaging to estimate gestational age;

(f) documentation that:

(i) the diagnosis of the condition leading to a determination that an abortion is necessary was made by a medical professional qualified by education, training, and experience to make the diagnosis; and

(ii) the woman is receiving care for the condition;

(g) the reason for the abortion procedure;

(h) for medication or chemical abortions, documentation confirming review of contraindications, adequate patient education, and compliance with the requirements of the medicaid physician-related services manual;

(i) the treatment plan; and

(j) the woman's signed informed consent for the proposed abortion procedure.

(6) As used in this section, the following terms apply:

(a) "Abortion" has the meaning provided in 50-20-104.

(b) "Physician" has the meaning provided in 37-3-102.

Section 2. Section 53-4-1005, MCA, is amended to read:

"**53-4-1005. (Temporary) Benefits provided.** (1) Benefits provided to participants in the program may include but are not limited to:

(a) inpatient and outpatient hospital services;

(b) physician and advanced practice registered nurse services;

(c) laboratory and x-ray services;

(d) well-child and well-baby services;

(e) immunizations;

(f) clinic services;

(g) dental services;

(h) prescription drugs;

(i) mental health and substance abuse treatment services;

(j) habilitative services as defined in 53-4-1103;

(k) hearing and vision exams; and

(l) eyeglasses.

(2) The program must comply with the provisions of 33-22-153 *and [section 1]*.

(3) The department shall adopt rules, pursuant to its authority under 53-4-1009, allowing it to cover significant dental needs beyond those covered in the basic plan. Expenditures under this subsection may not exceed $100,000 in state funds, plus any matched federal funds, each fiscal year.

(4) The department is specifically prohibited from providing payment for birth control contraceptives under this program.

(5) The department shall notify enrollees of any restrictions on access to health care providers, of any restrictions on the availability of services by out-of-state providers, and of the methodology for an out-of-state provider to be an eligible provider. (Terminates on occurrence of contingency--sec. 15, Ch. 571, L. 1999; sec. 3, Ch. 169, L. 2007; sec. 10, Ch. 97, L. 2013; sec. 5, Ch. 399, L. 2017.)"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2023.

Approved May 15, 2023

CHAPTER NO. 489

[SB 51]

AN ACT MODIFYING THE OPENING, SUBMISSION, AND INSPECTION OF BIDS AND PROPOSALS; ALLOWING PUBLIC COMMENT WITHIN 7 DAYS OF NOTICE OF INTENT TO AWARD A CONTRACT; AMENDING SECTIONS 18-3-110, 18-4-132, 18-4-303, 18-4-304, AND 18-4-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, modernizing the law governing procurement by the state of Montana is a stated purpose of the Montana Procurement Act; and

WHEREAS, the provisions regarding invitations for bid and requests for proposals have not been updated in more than 15 years; and

WHEREAS, business and technology have changed significantly in the last 15 years with innovations such as smart phones and video conferencing tools and the prevalence of remote work and electronic meetings; and

WHEREAS, unnecessarily complex government procurement and contracting processes discourage Montana small and medium-sized businesses from competing with large and sophisticated multinational and out-of-state corporations; and

WHEREAS, current procurement processes place business innovations and intellectual property at risk; and

WHEREAS, innovations and intellectual property are the most valuable assets of most small businesses in the information age and one of the primary competitive advantages small businesses have over large companies; and

WHEREAS, small businesses lack the resources of large companies to defend their innovations and intellectual property; and

WHEREAS, vendor and business surveys indicate current procurement processes and requirements provide an advantage to incumbent contractors and create other barriers and disincentives to seeking public contracts in Montana; and

WHEREAS, procurement methods that discourage competition are in direct conflict with the Montana Procurement Act's objectives to provide increased

economy in state purchasing and to maximize, to the fullest extent practicable, the purchasing value of public funds of the state; and

WHEREAS, the Montana Procurement Act exists to ensure the fair and equitable treatment of all persons who deal with the procurement system of the state and to foster effective, broad-based competition within the free enterprise system; and

WHEREAS, more than 40 states and the federal government utilize modern procurement practices that allow free, open, and transparent government contracting without compromising the security of businesses' innovations and intellectual property; and

WHEREAS, a stated purpose of the Montana Procurement Act is to make as consistent as possible the procurement laws among various jurisdictions; and

WHEREAS, modern procurement practices allow citizens to observe and participate in government contracting decisions while protecting the confidentiality of businesses' innovations and intellectual property and allow free and open competition that maximizes the purchasing value of public funds.

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

Section 1. Section 18-3-110, MCA, is amended to read:

"**18-3-110. Requests for proposals.** (1) The department, with the cooperation of the departments that will occupy the rental property, shall develop a request for proposals defining the state's program and building specification requirements. A request for proposals must be administered in accordance with 18-4-304(3) through ~~(6)~~ *(7)*.

(2) For projects valued at less than $2 million, the departments may develop the request for proposals. For projects valued at $2 million or more, the departments shall contract with a licensed architect or engineer selected in accordance with 18-2-112 for the development of the request for proposals.

(3) A successful proposer, general contractor, or subcontractor engaged in construction under this part shall pay the standard prevailing rate of wages to employees engaged in the construction of the leased property."

Section 2. Section 18-4-132, MCA, is amended to read:

"**18-4-132. Application.** (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000;

(e) contracts entered into by the state compensation insurance fund to procure insurance-related services;

(f) ~~employment of~~ *contracts with*:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(iv) consulting actuaries;

(v) a private ~~consultant employed~~ *person contracted* by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(vi) a private ~~consultant employed~~ *person contracted* by the Montana state lottery;

(vii) a private investigator licensed by any jurisdiction;

(viii) a claims adjuster; or

(ix) a court reporter appointed as an independent contractor under 3-5-601;

(g) electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(h) the purchase or commission of art for a museum or public display;

(i) contracting under 47-1-121 of the Montana Public Defender Act;

(j) contracting under Title 90, chapter 4, part 11; or

(k) contracting under Title 90, chapter 14, part 1, when the total contract value is $12,501 or less.

(4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

(i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;

(ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

(iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).

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

(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or manufactured."

Section 3. Section 18-4-303, MCA, is amended to read:

"**18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time before the date set forth in the invitation for the ~~opening~~ *submission* of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time before the bid ~~opening~~ *submission deadline*.

(3) ~~Bids must be opened publicly at the time and place designated in the invitation for bids. Each bidder and any member of the public has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids after they are opened and reviewed by the procurement officer for release, subject to the same limitations specified in 18-4-304 (4) for competitive sealed proposals.~~ *Bids and other information received from bidders in response to an invitation for bids may not be inspected by the public until the department provides notice of intent to award a contract as provided in subsection (9). After the department provides notice of intent to award a contract, bids and other information received from bidders may be inspected by other bidders and the public subject to the same limitations specified in 18-4-304(8) for competitive sealed proposals.*

~~(4) The amount of each bid and other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection.~~

~~(5) After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 18-4-126.~~

~~(6)~~*(4)* Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids must set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

~~(7)~~*(5)* Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

~~(8)~~*(6)* If an award is made, it must be made with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the lowest responsible and responsive bid does not exceed the funds by more than 5%, the director or the head of a purchasing agency may, in situations in which time or economic considerations preclude resolicitation of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder in order to bring the bid within the amount of available funds.

~~(9)~~*(7)* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

~~(10)~~*(8)* In case of a tie bid, preference must be given to the bidder, if any, offering American-made products or supplies.

(9) Prior to awarding a contract, the department shall provide to the public notice of intent to award a contract and of 7 days to submit written comments regarding the proposed award."

Section 4. Section 18-4-304, MCA, is amended to read:

"**18-4-304. Competitive sealed proposals.** (1) The department may procure supplies and services through competitive sealed proposals.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) *Proposals and other information received from offerors in response to a request for proposals may not be inspected by the public until the department provides notice of intent to award a contract as provided in subsection (7).* ~~After the proposals have been opened at the time and place designated in the request for proposals and reviewed by the procurement officer for release, proposal documents may be inspected by the public, subject to the limitations of:~~ *After the department provides notice of intent to award a contract, proposals and other information received from offerors may be inspected by other offerors and the public subject to the limitations in subsection (8).*

~~(a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;~~

~~(b) matters involving individual safety as determined by the department; and~~

~~(c) other constitutional protections.~~

(5) The request for proposals must state the evaluation criteria and their relative importance. If an award is made, it must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other criteria may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.

(6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal.

(7) Prior to awarding a contract, the department shall provide to the public notice of intent to award a contract and of 7 days to submit written comments regarding the proposed award.

(8) Prior to releasing proposals and other information received from offerors, the department shall evaluate whether public disclosure must be limited:

(a) under the Uniform Trade Secrets Act provided for in Title 30, chapter 14, part 4;

(b) due to matters involving individual safety; and

(c) as required by other constitutional protections."

Section 5. Section 18-4-307, MCA, is amended to read:

"**18-4-307. Cancellation of invitations for bids or requests for proposals.** *(1)* An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons ~~therefor~~ must be made part of the contract file.

(2) The department may consider public comment when deciding whether to take any action described in this section."

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

Approved May 16, 2023

CHAPTER NO. 490

[HB 721]

AN ACT CREATING THE DISMEMBERMENT ABORTION PROHIBITION ACT; PROVIDING DEFINITIONS; PROHIBITING DISMEMBERMENT ABORTION PROCEDURES; REQUIRING REPORTS; PROVIDING PENALTIES AND PROFESSIONAL SANCTIONS; AND PROVIDING EFFECTIVE DATES.

WHEREAS, at 12 weeks' gestation, an unborn human being can open and close fingers, starts to make sucking motions, senses stimulation from the world outside the womb, and can likely experience pain, and, as the Supreme Court in Gonzales v. Carhart, 550 U.S. 124 (2007), recognized, the unborn human being has taken on "the human form" in all relevant aspects; and

WHEREAS, many abortion procedures performed after 12 weeks' gestation are dismemberment abortion procedures, which involve "tearing apart and extracting piece-by-piece from the uterus what was until then a living child.. [and which are] usually done during the 15 to 18 week stage of development, at which time the unborn child's heart is already beating", West Alabama Women's Ctr. v. Williamson, 900 F.3d 1310 (11th Cir. 2018); and

WHEREAS, the dismemberment abortion procedure involves the use of clamps, grasping forceps, tongs, scissors, and similar instruments that through the convergence of two rigid levers slide, crush, or grasp a portion of an unborn human being's body in order to cut it, rip it off, or crush it; and

WHEREAS, the Legislature find that the intentional commission of such acts for nontherapeutic or elective reasons is a barbaric practice, is dangerous for the pregnant woman, and is demeaning to the medical profession; and

WHEREAS, a law regulating abortion, like other health and welfare laws, is entitled to a strong presumption of validity, and it must be sustained if there is a rational basis on which the Legislature could have thought that it would serve legitimate state interests; and

WHEREAS, Montana's legitimate interest in regulating abortion generally and the performance of the dismemberment abortion procedure specifically includes "respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability", Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022); and

WHEREAS, an article published in Obstetrics and Gynecology in 2004 reported that abortion carries significant physical and psychological risks to the pregnant woman that increase with gestational age, and, in abortions performed after 8 weeks' gestation, the relative physical and psychological risks escalate exponentially as gestational age increases; and

WHEREAS, as the second trimester progresses, in the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term; and

WHEREAS, dismemberment abortion procedures carry inherent risks of infection, bleeding, damage to other genitourinary and gastrointestinal

organs, incomplete emptying of the uterus, cervical laceration, and uterine perforation; and

WHEREAS, the Charlotte Lozier Institute reports that dismemberment abortion procedures and other abortion procedures performed after the first trimester account for "a disproportionate amount of abortion-related morbidity and mortality".

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

Section 1. Short title. [Sections 1 through 7] may be cited as the "Dismemberment Abortion Prohibition Act".

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) (a) "Abortion" means the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn human being.

(b) The term does not include:

(i) an act to remove an ectopic pregnancy; or

(ii) a separation procedure performed because of a medical emergency and prior to the ability of the unborn child to survive outside of the womb with or without artificial support.

(2) "Attempt to perform or induce an abortion" means to do or omit anything that, under the circumstances as a person believes them to be, is an act or omission that constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in violation of [sections 1 through 7].

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

(4) "Dismemberment abortion" or "dismemberment abortion procedure" means a procedure that involves:

(a) the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn human being; and

(b) dilation of the cervix, insertion of grasping instruments, and removal of disarticulated fetal parts from a living unborn human being.

(5) "Gestational age" or "probable gestation age" means the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman.

(6) "Human being" means an individual member of the species Homo sapiens, from and after the point of conception.

(7) "Knowingly" has the meaning provided in 45-2-101.

(8) "Major bodily function" includes but is not limited to functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(9) (a) "Medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, makes a separation procedure performed prior to the ability of the unborn human being to survive outside of the womb with or without artificial support necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy

will create a serious risk of substantial and irreversible impairment of a major bodily function.

(b) The term does not include mental or psychological conditions.

(10) "Physician" means a person licensed to practice medicine in Montana.

(11) "Physician assistant" means a person licensed under Title 37, chapter 20.

(12) "Pregnant" means the human female reproductive condition of having a living unborn human being within the female's body throughout the entire embryonic and fetal stages of the unborn human being from fertilization to full gestation and childbirth.

(13) "Purposely" has the meaning provided in 45-2-101.

Section 3. Dismemberment abortion procedures prohibited -- penalty. (1) Except in a medical emergency, a person may not purposely or knowingly perform, induce, or attempt to perform or induce a dismemberment abortion procedure.

(2) A person who violates this section is guilty of a felony and on conviction shall be punished by a fine in an amount not to exceed $50,000, imprisonment for a term of not less than 5 years and not more than 10 years, or both.

(3) A woman on whom an abortion is performed, induced, or attempted in violation of [sections 1 through 7] may not be prosecuted for conspiracy to commit a violation of [sections 1 through 7].

Section 4. Reporting -- forms. (1) If a physician or physician assistant performs a dismemberment abortion procedure because of a medical emergency, the physician or the physician assistant shall, within 15 days, file with the department on a form supplied by the department a report containing the following information:

(a) the date the procedure was performed;

(b) the probable gestational age of the unborn human being and the method used to calculate gestational age;

(c) a statement declaring that the procedure was necessary because of a medical emergency;

(d) the specific medical indications supporting the determination that a medical emergency existed; and

(e) the physician's or the physician assistant's attestation under oath that the information stated on the form is true and correct to the best of the person's knowledge.

(2) Reports required by and submitted pursuant to this section may not contain the name of the pregnant woman on whom the dismemberment abortion procedure was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, the woman who underwent the procedure.

Section 5. Professional sanctions -- civil fines -- enforcement. (1) A physician or physician assistant who purposely or knowingly violates [section 3] commits unprofessional conduct, and the person's license to practice medicine in Montana must be suspended for a minimum of 1 year pursuant to Title 37.

(2) A physician or physician assistant who purposely or knowingly delivers to the department a report required under [section 4] that is known by the person to contain false information shall be subject to a fine of $2,000 imposed by the department.

(3) A physician or physician assistant who purposely or knowingly fails to file with the department a report required under [section 4] shall be subject to a fine of $1,000 imposed by the department.

(4) The attorney general may enforce the provisions of [sections 1 through 7] on behalf of the department. The department also has the authority to bring an action.

Section 6. Construction. (1) [Sections 1 through 7] may not be construed to:

(a) create or recognize a right to abortion or a right to government funding of abortion;

(b) alter generally accepted medical standards; or

(c) make lawful an abortion that is otherwise unlawful.

(2) The right of individual privacy as referenced in the Montana constitution, the Montana Code Annotated, or the Administrative Rules of Montana does not create, and may not be construed as creating or recognizing, a right to abortion or to governmental funding of abortion.

Section 7. Right of intervention. The legislature may, by joint resolution, appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality or enforceability of [sections 1 through 7] is challenged.

Section 8. Direction to department. The department of public health and human services is directed to create the form required by [section 4] within 30 days after [the effective date of this act].

Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 7].

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 dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 4] and [section 5(2) and (3)] are effective on the later of:

(a) passage and approval; or

(b) the date the department of public health and human services certifies in writing to the code commissioner that the form required under [section 4] has been created.

Approved May 16, 2023

CHAPTER NO. 491

[HB 862]

AN ACT PROHIBITING THE USE OF PUBLIC FUNDS FOR ABORTION; PROVIDING EXCEPTIONS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Prohibited uses of public funds. Public funds or money may not be expended for an abortion. The limitations contained in this section do not apply to an abortion:

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case in which a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

Section 2. Appropriation. There is appropriated $1,000 from the general fund to the department of public health and human services for the biennium beginning July 1, 2023, for the purpose of updating written materials related to [section 1].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, and the provisions of Title 17 apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2023.

Approved May 16, 2023

CHAPTER NO. 492

[HB 937]

AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF ABORTION CLINICS; PROVIDING DEFINITIONS; PROVIDING FOR ANNUAL LICENSURE FEES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 50-5-101, MCA.

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

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Abortion clinic" means a facility that:

(i) performs surgical abortion procedures; or

(ii) provides an abortion-inducing drug.

(b) The term does not include:

(i) a hospital as defined in 50-5-101;

(ii) a critical access hospital as defined in 50-5-101;

(iii) an outpatient center for surgical services as defined in 50-5-101; or

(iv) a facility that provides, prescribes, administers, or dispenses an abortion-inducing drug to fewer than five patients each year.

(2) (a) "Abortion-inducing drug" means a medicine, drug, or other substance provided with the intent of terminating the clinically diagnosable pregnancy of a woman.

(b) The term includes the off-label use of drugs known to have abortion-inducing properties that are prescribed specifically with the intent of causing an abortion.

(c) The term does not include the use of drugs that may be known to cause an abortion if the drugs are prescribed for a medical indication other than abortion.

(3) "Affiliate" means an organization that directly or indirectly:

(a) owns or controls another organization;

(b) is owned or controlled, in whole or in part, by another organization;

(c) is related by shareholdings or other means of control to another organization;

(d) is a parent or subsidiary of another organization; or

(e) is under common control with another organization.

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

Section 2. Licensure of abortion clinics -- application -- fee. (1) A person may not operate or advertise the operation of an abortion clinic unless the person is licensed by the department.

(2) An applicant for licensure as an abortion clinic shall apply on a form prescribed by the department containing information requested by the department pursuant to [section 3], including:

(a) an attestation that the applicant is of reputable and responsible character and is able to comply with rules adopted under [section 3];

(b) the name of the applicant;

(c) the location of the abortion clinic and the name of the person in charge of the abortion clinic;

(d) the qualifications of the applicant or of the medical practitioners employed by or to be employed by the abortion clinic to perform surgical abortion procedures or to prescribe, administer, or provide abortion-inducing drugs; and

(e) disclosures regarding:

(i) whether the applicant or an owner or affiliate of the applicant operated an abortion clinic that was closed as a direct result of patient health and safety;

(ii) whether an owner or clinic staff member has been convicted of a felony offense; and

(iii) whether an owner or clinic staff member was ever employed by a facility owned or operated by the applicant that closed because of administrative or legal action.

(3) An applicant for licensure shall include with the application copies of:

(a) administrative and legal documentation relating to information required under subsections (2)(e)(i) and (2)(e)(ii);

(b) inspection reports, if any; and

(c) violation remediation contracts, if any.

Section 3. Department regulation of abortion clinics -- rulemaking. (1) In accordance with Title 50, chapter 5, the department shall license and regulate abortion clinics as provided in [sections 1 through 4] and shall enforce the provisions of [sections 1 through 4].

(2) The department shall adopt administrative rules for the licensure and operation of abortion clinics, including rules:

(a) establishing minimum license qualifications;

(b) establishing requirements for:

(i) sanitation standards;

(ii) staff qualifications;

(iii) necessary emergency equipment;

(iv) providing emergency care;

(v) monitoring patients after the administration of anesthesia;

(vi) providing follow-up care for patient complications;

(vii) quality assurance;

(viii) infection control;

(ix) the architecture or layout of an abortion clinic;

(x) providing to patients a hotline telephone number to assist women who are coerced into an abortion or who are victims of sex trafficking; and

(xi) obtaining annual training by law enforcement on identifying and assisting women who are coerced into an abortion or who are victims of sex trafficking;

(c) establishing operating policies for maintaining medical records, including the requirement that forms requiring a patient signature be stored in the patient's medical record;

(d) establishing procedures for the issuance, renewal, denial, and revocation of licenses, including:

(i) the form and content of the license; and

(ii) the collection of an annual license fee of $450, payable to the department for deposit in the general fund;

(e) establishing procedures and standards for inspections; and

(f) establishing procedures for addressing any violations of this section or rules adopted pursuant to this section.

Section 4. Inspections. In accordance with Title 50, chapter 5, the department shall inspect an abortion clinic at least once each calendar year. If the department receives a complaint involving an abortion clinic, the department may conduct additional investigations as needed.

Section 5. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation status to the outpatient centers for surgical services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a long-term care facility located in the geographic area affected by the application, an agency that establishes rates for long-term care facilities, or a third-party payer who reimburses long-term care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a long-term care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a new health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

(a) an existing health care facility; or

(b) a long-term care facility as defined in 50-5-301.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

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

(20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and requirements.

(21) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

(22) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(23) "Federal acts" means federal statutes for the construction of health care facilities.

(24) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(25) "Healthcare facilities accreditation program" means the program nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes *abortion clinics as defined in [section 1],* chemical dependency facilities, critical access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(27) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(28) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(29) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(30) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(31) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided must include medical personnel available to provide emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(c) The emergency care requirement for a hospital that specializes in providing health services for psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed registered nurses.

(32) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(33) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(34) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(35) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(36) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(37) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or correctional facilities operating under the authority of the department of corrections.

(38) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(39) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(40) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(41) "Offer" means the representation by a health care facility that it can provide specific health services.

(42) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(43) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(44) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(45) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(46) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(47) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(48) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(49) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(50) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(51) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(52) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(53) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must

be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(54) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(55) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(56) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(57) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (57), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

(58) "State long-term care facilities plan" means the plan prepared by the department to project the need for long-term care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(59) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

(60) "The joint commission" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements."

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 4].

Approved May 16, 2023

CHAPTER NO. 493

[HB 225]

AN ACT PROVIDING FOR AN ADOPTION TAX CREDIT; PROVIDING THAT THE TAX CREDIT IS REFUNDABLE; PROVIDING RULEMAKING AUTHORITY; PROVIDING A DEFINITION; AMENDING SECTION 15-30-2303, 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. Adoption tax credit -- rulemaking. (1) A resident taxpayer is allowed a credit against the tax imposed by 15-30-2103 or 15-30-2151 for the legal adoption of an eligible child on or after July 1, 2022.

(2) The amount of the credit allowed under subsection (1) is equal to:

(a) $7,500 in the tax year the adoption is final if the eligible child was in foster care under the custody of the state as provided in Title 41, chapter 3, at the time of adoption; or

(b) $5,000 in the tax year the adoption is final if the eligible child does not meet the requirements of subsection (2)(a).

(3) To claim the credit under this section, the taxpayer shall:

(a) include the name, age, location of birth, and federal tax identification number, if known, of the eligible child on the tax return; and

(b) provide other information as required by the department, including the identification of an agent assisting with the adoption.

(4) The taxpayer is entitled to a refund equal to the amount by which the credit exceeds the taxpayer's tax liability or, if the taxpayer has no tax liability under this chapter, a refund equal to the amount of the credit. The credit may be claimed by filing a Montana income tax return.

(5) Only one credit is allowed for each eligible child.

(6) The department shall adopt rules to administer this credit.

(7) For the purposes of this section, "eligible child" means a child under the age of 18 or a person who is physically or mentally incapable of providing self-care.

Section 2. Section 15-30-2303, MCA, is amended to read:

"**15-30-2303. Tax credits subject to review by interim committee.** (1) The following tax credits must be reviewed during the biennium commencing July 1, 2019, and during each biennium commencing 10 years thereafter:

(a) the credit for contractor's gross receipts provided for in 15-50-207; and

(b) the credit for elderly homeowners and renters provided for in 15-30-2337 through 15-30-2341.

(2) The following tax credits must be reviewed during the biennium commencing July 1, 2021, and during each biennium commencing 10 years thereafter:

(a) the credit for donations to an educational improvement account provided for in 15-30-2334, 15-30-3110, and 15-31-158; ~~and~~

(b) the credit for donations to a student scholarship organization provided for in 15-30-2335, 15-30-3111, and 15-31-159*; and*

(c) the adoption tax credit provided for in [section 1].

(3) The following tax credits must be reviewed during the biennium commencing July 1, 2023, and during each biennium commencing 10 years thereafter:

(a) the credit for infrastructure use fees provided for in 17-6-316;

(b) the credit for contributions to a qualified endowment provided for in 15-30-2327 through 15-30-2329, 15-31-161, and 15-31-162; and

(c) the credit for property to recycle or manufacture using recycled material provided for in Title 15, chapter 32, part 6.

(4) The following tax credits must be reviewed during the biennium commencing July 1, 2025, and during each biennium commencing 10 years thereafter:

(a) the credit for preservation of historic buildings provided for in 15-30-2342 and 15-31-151;

(b) the credit for unlocking state lands provided for in 15-30-2380;

(c) the job growth incentive tax credit provided for in 15-30-2361 and 15-31-175; and

(d) the credit for trades education and training provided for in 15-30-2359 and 15-31-174.

(5) The following tax credits must be reviewed during the biennium commencing July 1, 2027, and during each biennium commencing 10 years thereafter:

(a) the credit for hiring a registered apprentice or veteran apprentice provided for in 15-30-2357 and 15-31-173;

(b) the earned income tax credit provided for in 15-30-2318; and

(c) the media production and postproduction credits provided for in 15-31-1007 and 15-31-1009.

(6) The revenue interim committee shall review the tax credits scheduled for review and make recommendations in accordance with 5-11-210 at the conclusion of the full review to the legislature about whether to eliminate or revise the credits. The committee shall also review any tax credit with an expiration date or termination date that is not listed in this section in the biennium before the credit is scheduled to expire or terminate.

(7) The revenue interim committee shall review the credits using the following criteria:

(a) whether the credit changes taxpayer decisions, including whether the credit rewards decisions that may have been made regardless of the existence of the tax credit;

(b) to what extent the credit benefits some taxpayers at the expense of other taxpayers;

(c) whether the credit has out-of-state beneficiaries;

(d) the timing of costs and benefits of the credit and how long the credit is effective;

(e) any adverse impacts of the credit or its elimination and whether the benefits of continuance or elimination outweigh adverse impacts; and

(f) the extent to which benefits of the credit affect the larger economy. (Subsection (4)(d) terminates December 31, 2026--sec. 7, Ch. 248, L. 2021; subsection (4)(c) terminates December 31, 2028--sec. 24(1), Ch. 550, L. 2021.)"

Section 3. 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 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to eligible adoptions on or after July 1, 2022, claimed on tax returns filed for tax years beginning after December 31, 2022.

Section 6. Termination. [This act] terminates December 31, 2031.

Approved May 16, 2023

CHAPTER NO. 494

[HB 110]

AN ACT MAKING PERMANENT THE INTERIM BUDGET COMMITTEES; EXEMPTING THOSE COMMITTEES FROM INTERIM STUDY ASSIGNMENTS; AMENDING SECTIONS 5-12-301 AND 5-12-501, MCA; REPEALING SECTION 12, CHAPTER 525, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 5-12-301, MCA, is amended to read:

"**5-12-301. Legislative fiscal division.** There is a legislative fiscal division. The legislative fiscal analyst shall manage the legislative fiscal division to support the legislative finance committee *and the interim budget committees identified in 5-12-501* and carry out the provisions of this chapter."

Section 2. Section 5-12-501, MCA, is amended to read:

"**5-12-501. ~~(Temporary)~~ Interim budget committees.** (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim budget committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility.

(2) The following are the interim budget committees of the legislature:

(a) general government budget committee to oversee the budget activities of the department of administration, department of military affairs, department of commerce, state auditor's office, governor's office, secretary of state, commissioner of political practices, department of revenue, department of labor and industry, legislative branch, and consumer counsel;

(b) health and human services budget committee to oversee the budget activities of the department of public health and human services;

(c) natural resources and transportation budget committee to oversee the budget activities of the department of livestock, department of environmental quality, department of agriculture, department of natural resources and conservation, department of transportation, and department of fish, wildlife, and parks;

(d) judicial branch, law enforcement, and justice budget committee to oversee the budget activities of the judicial branch, department of justice, public service regulation, office of state public defender, and department of corrections; and

(e) education budget committee to oversee budget activities related to the Montana arts council, Montana historical society, board of public education, office of public instruction, school for the deaf and blind, Montana state library, and commissioner of higher education; and

(f) long-range planning budget committee to oversee the budget activities related to long-range program implementation issues considered by the subcommittee during the session.

(3) An interim budget committee may refer an issue to an interim committee provided for in 5-5-202 that the referring committee determines to be more appropriate for the consideration of the issue.

(4) If there is a dispute between interim committees and an interim budget committee as to which committee has proper jurisdiction over a subject, the legislative council and legislative finance committee shall consult and determine the most appropriate committee and assign the subject to that committee.

(5) Interim budget committees may not be assigned interim studies pursuant to 5-5-217. ~~(Terminates December 31, 2025--sec. 12, Ch. 525, L. 2021.)~~"

Section 3. Repealer. Section 12, Chapter 525, Laws of 2021, is repealed.

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

Approved May 1, 2023

CHAPTER NO. 495

[HB 306]

AN ACT REQUIRING A CANDIDATE FOR OFFICE TO BE REGISTERED TO VOTE; AMENDING SECTION 2-16-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-16-102, MCA, is amended to read:

"**2-16-102. Qualifications generally -- age and citizenship.** (1) Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the laws concerning the various offices.

(2) A person is not eligible to hold civil office in this state who at the time of election or appointment is not 18 years of age or older and a citizen of this state.

(3) A person is not eligible to hold civil office in this state who at the time of the filing deadline for the race is not registered to vote in Montana. An exemption must be granted for an individual who will turn 18 years old before the election, but not before the filing deadline pursuant to 13-1-114."

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

Approved May 1, 2023

CHAPTER NO. 496

[HB 400]

AN ACT ELIMINATING THE OPTION TO PROVIDE ORAL ENTITY REPORTS TO THE LEGISLATURE INSTEAD OF WRITTEN ENTITY REPORTS; AND AMENDING SECTIONS 5-11-210, 5-11-222, AND 17-5-1650, MCA.

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

Section 1. Section 5-11-210, MCA, is amended to read:

"**5-11-210. Clearinghouse for reports to legislature.** (1) ~~(a) Except as provided in subsection (1)(b), an~~ *An* entity required to report to the legislature in accordance with 5-11-222 shall provide to the executive director of the legislative services division:

~~(i)~~*(a)* the final title of the report;

~~(ii)~~*(b)* an abstract or description of the contents of the report, not to exceed 50 words, including reference to the statute establishing the required report;

~~(iii)~~*(c)* if the report is available electronically, its location on the internet and an electronic copy of the report; and

~~(iv)~~*(d)* unless provided electronically in accordance with subsection (1)~~(a)(iii)~~*(c)*, a paper copy of the report with a recommendation on how many additional hard copies should be printed for the legislature.

~~(b) If an oral report is provided in accordance with 5-11-222(4)(a), the reporting entity shall provide to the executive director of the legislative services division:~~

~~(i) the title of the report given;~~

~~(ii) a description of the report, not to exceed 50 words, including reference to the statute establishing the required report; and~~

~~(iii) the date the report was provided to an interim or administrative committee.~~

(2) The legislative services division may require that a paper copy of a report provided in accordance with subsection (1)~~(a)(iv)~~*(d)* be submitted in an electronic format.

(3) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative services division.

(4) The executive director of the legislative services division shall prepare a list of all reports required to be presented to the legislature in accordance with 5-11-222.

(5) (a) The executive director shall, as soon as possible following a general election, provide to each holdover senator, senator-elect, and representative-elect a list of the reports available. Legislators may then request copies of reports included on the list.

(b) The executive director of the legislative services division shall provide either paper copies or electronic copies of reports requested pursuant to subsection (5)(a) by either providing links to electronic copies ~~or audio recordings of oral reports,~~ or by delivering paper copies of the reports during the first week of the legislative session."

Section 2. Section 5-11-222, MCA, is amended to read:

"**5-11-222. Reports to legislature.** (1) (a) Except as provided in subsection (1)(b) and ~~(6)~~ *(5)*, a report to the legislature means a biennial report required by the legislature and filed in accordance with 5-11-210 on or before September 1 of each year preceding the convening of a regular session of the legislature.

(b) If otherwise specified in law, a report may be required more or less frequently than the biennial requirement in subsection (1)(a).

(2) Reports to the legislature include:

(a) annual reports on the unified investment program for public funds and public retirement systems and state compensation insurance fund assets audits from the board of investments in accordance with Article VIII, section 13 of the Montana constitution;

(b) federal mandates requirements from the governor in accordance with 2-1-407;

(c) activities of the state records committee in accordance with 2-6-1108;

(d) revenue studies from the director of revenue, if requested, in accordance with 2-7-104;

(e) legislative audit reports from the legislative audit division in accordance with 2-8-112 and 23-7-410;

(f) progress on gender and racial balance from the governor in accordance with 2-15-108;

(g) a mental health report from the ombudsman in accordance with 2-15-210;

(h) policies related to children and families from the interagency coordinating council for state prevention in accordance with 2-15-225;

(i) watercourse name changes, if any, from the secretary of state in accordance with 2-15-401;

(j) results of programs established in 2-15-3111 through 2-15-3113 from the livestock loss board in accordance with 2-15-3113;

(k) the allocation of space report from the department of administration required in accordance with 2-17-101;

(l) information technology activities in accordance with 2-17-512;

(m) state strategic information technology plan exceptions, if granted, from the department of administration in accordance with 2-17-515;

(n) the state strategic information technology plan and biennial report from the department of administration in accordance with 2-17-521 and 2-17-522;

(o) reports from standing, interim, and administrative committees, if prepared, in accordance with 2-17-825 and 5-5-216;

(p) statistical and other data related to business transacted by the courts from the court administrator, if requested, in accordance with 3-1-702;

(q) the judicial standards commission report in accordance with 3-1-1126;

(r) an annual report on the actual cost of legislation that had a projected fiscal impact from the office of budget and program planning in accordance with 5-4-208;

(s) a link to annual state agency reports on grants awarded in the previous fiscal year established by the legislative finance committee in accordance with 5-12-208;

(t) reports prepared by the legislative fiscal analyst, and as determined by the analyst, in accordance with 5-12-302(4);

(u) a report, if necessary, on administrative policies or rules adopted under 5-11-105 that may impair the independence of the legislative audit division in accordance with 5-13-305;

(v) if a waste of state resources occurs, a report from the legislative state auditor, in accordance with 5-13-311;

(w) school funding commission reports each fifth interim in accordance with 5-20-301;

(x) a report of political committee operations conducted on state-owned property, if required, from a political committee to the legislative services division in accordance with 13-37-404;

(y) a report concerning taxable value from the department of revenue in accordance with 15-1-205;

(z) a report on tax credits from the revenue interim committee in accordance with 15-30-2303;

(aa) semiannual reports on the Montana heritage preservation and development account from the Montana heritage preservation and development commission in accordance with 15-65-121;

(bb) general marijuana regulation reports from the department of revenue in accordance with 16-12-110;

(cc) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(3);

(dd) annual reports on general fund and nongeneral fund encumbrances from the department of administration in accordance with 17-1-102;

(ee) loans or loan extensions authorized for two consecutive fiscal years from the department of administration and office of commissioner of higher education, including negative cash balances from the commissioner of higher education, in accordance with 17-2-107;

(ff) a report of local government entities that have balances contrary to limitations provided for in 17-2-302 or that failed to reduce the charge from the department of administration in accordance with 17-2-304;

(gg) an annual report from the board of investments in accordance with 17-5-1650(2);

(hh) a report on retirement system trust investments and benefits from the board of investments in accordance with 17-6-230;

(ii) recommendations for reductions in spending and related analysis, if required, from the office of budget and program planning in accordance with 17-7-140;

(jj) a statewide facility inventory and condition assessment from the department of administration in accordance with 17-7-202;

(kk) actuary reports and investigations for public retirement systems from the public employees' retirement board in accordance with 19-2-405;

(ll) a work report from the public employees' retirement board in accordance with 19-2-407;

(mm) annual actuarial reports and evaluations from the teachers' retirement board in accordance with 19-20-201;

(nn) reports from the state director of K-12 career and vocational and technical education, as requested, in accordance with 20-7-308;

(oo) 5-year state plan for career and technical education reports from the board of regents in accordance with 20-7-330;

(pp) a gifted and talented students report from the office of public instruction in accordance with 20-7-904;

(qq) status changes for at-risk students from the office of public instruction in accordance with 20-9-328;

(rr) status changes for American Indian students from the office of public instruction in accordance with 20-9-330;

(ss) reports regarding the Montana Indian language preservation program from the office of public instruction in accordance with 20-9-537;

(tt) proposals for funding community colleges from the board of regents in accordance with 20-15-309;

(uu) expenditures and activities of the Montana agricultural experiment station and extension service, as requested, in accordance with 20-25-236;

(vv) reports, if requested by the legislature, from the president of each of the units of the higher education system in accordance with 20-25-305;

(ww) reports, if prepared by a public postsecondary institution, regarding free expression activities on campus in accordance with 20-25-1506;

(xx) reports from the Montana historical society trustees in accordance with 22-3-107;

(yy) state lottery reports in accordance with 23-7-202;

(zz) a report from the division of banking and financial institutions, if required, from the department of administration in accordance with 32-11-306;

(aaa) state fund reports, if required, from the commissioner in accordance with 33-1-115;

(bbb) reports from the department of labor and industry in accordance with 39-6-101;

(ccc) victim unemployment benefits reports from the department of labor and industry in accordance with 39-51-2111;

(ddd) state fund business reports in accordance with 39-71-2363;

(eee) risk-based capital reports, if required, from the state fund in accordance with 39-71-2375;

(fff) child custody reports from the office of the court administrator in accordance with 41-3-1004;

(ggg) reports of remission of fine or forfeiture, respite, commutation, or pardon granted from the governor in accordance with 46-23-316;

(hhh) annual statewide public defender reports from the office of state public defender in accordance with 47-1-125;

(iii) a trauma care system report from the department of public health and human services in accordance with 50-6-402;

(jjj) an older Montanans trust fund report from the department of public health and human services in accordance with 52-3-115;

(kkk) Montana criminal justice oversight council reports in accordance with 53-1-216;

(lll) medicaid block grant reports from the department of public health and human services in accordance with 53-1-611;

(mmm) reports on the approval and implementation status of medicaid section 1115 waivers in accordance with 53-2-215;

(nnn) provider rate, medicaid waiver, or medicaid state plan change reports from the department of public health and human services in accordance with 53-6-101;

(ooo) medicaid funding reports from the department of public health and human services in accordance with 53-6-110;

(ppp) proposals regarding managed care for medicaid recipients, if required, from the department of public health and human services in accordance with 53-6-116;

(qqq) suicide reduction plans from the department of public health and human services in accordance with 53-21-1102;

(rrr) a compliance and inspection report from the department of corrections in accordance with 53-30-604;

(sss) emergency medical services grants from the department of transportation in accordance with 61-2-109;

(ttt) annual financial reports on the environmental contingency account from the department of environmental quality in accordance with 75-1-1101;

(uuu) the Flathead basin commission report in accordance with 75-7-304;

(vvv) a report from the land board, if prepared, in accordance with 76-12-109;

(www) an annual state trust land report from the land board in accordance with 77-1-223;

(xxx) a noxious plant report, if prepared, from the department of agriculture in accordance with 80-7-713;

(yyy) state water plans from the department of natural resources and conservation in accordance with 85-1-203;

(zzz) reports on the allocation of renewable resources grants and loans for emergencies, if required, from the department of natural resources and conservation in accordance with 85-1-605;

(aaaa) water storage projects from the governor's office in accordance with 85-1-704;

(bbbb) upper Clark Fork River basin steering committee reports, if prepared, in accordance with 85-2-338;

(cccc) upland game bird enhancement program reports in accordance with 87-1-250;

(dddd) private land/public wildlife advisory committee reports in accordance with 87-1-269;

(eeee) a future fisheries improvement program report from the department of fish, wildlife, and parks in accordance with 87-1-272;

(ffff) license revenue recommendations from the department of fish, wildlife, and parks in accordance with 87-1-629;

(gggg) land information data reports from the state library in accordance with 90-1-404;

(hhhh) hydrocarbon and geology investigation reports from the bureau of mines and geology in accordance with 90-2-201;

(iiii) coal ash markets investigation reports from the department of commerce in accordance with 90-2-202;

(jjjj) an annual report from the pacific northwest electric power and conservation planning council in accordance with 90-4-403;

(kkkk) community property-assessed capital enhancements program reports from the Montana facility finance authority in accordance with 90-4-1303;

(llll) veterans' home loan mortgage loan reports from the board of housing in accordance with 90-6-604;

(mmmm) matching infrastructure planning grant awards by the department of commerce in accordance with 90-6-703(3); and

(nnnn) treasure state endowment program reports from the department of commerce in accordance with 90-6-710;

(3) Reports to the legislature include reports made to an interim committee as follows:

(a) reports to the law and justice interim committee, including:

(i) findings of the domestic violence fatality review commission in accordance with 2-15-2017;

(ii) the report from the missing indigenous persons review commission in accordance with 2-15-2018;

(iii) reports from the department of justice and public safety officer standards and training council in accordance with 2-15-2029;

(iv) information on the Montana False Claims Act from the department of justice in accordance with 17-8-416;

(v) annual case status reports from the attorney general in accordance with 41-3-210;

(vi) office of court administrator reports in accordance with 41-5-2003;

(vii) statewide public safety communications system activities from the department of justice in accordance with 44-4-1606;

(viii) reports on the status of the crisis intervention team training program from the board of crime control in accordance with 44-7-110;

(ix) restorative justice grant program status and performance from the board of crime control in accordance with 44-7-302;

(x) reports on offenders under supervision with new offenses or violations from the department of corrections in accordance with 46-23-1016;

(xi) supervision responses grid reports from the department of corrections in accordance with 46-23-1028;

(xii) statewide public defender reports and information from the office of state public defender in accordance with 47-1-125;

(xiii) every 5 years, a percentage change in public defender funding report from the legislative fiscal analyst in accordance with 47-1-125;

(xiv) every 5 years, statewide public defender reports on the percentage change in funding from the office of state public defender in accordance with 47-1-125; and

(xv) a report from the quality assurance unit from the department of corrections in accordance with 53-1-211;

(b) reports to the state administration and veterans' affairs interim committee, including:

(i) a report that includes information technology activities and additional information from the information technology board in accordance with 2-17-512 and 2-17-513;

(ii) a report from the capitol complex advisory council in accordance with 2-17-804;

(iii) a report on the employee incentive award program from the department of administration in accordance with 2-18-1103;

(iv) a board of veterans' affairs report in accordance with 10-2-102;

(v) a report on grants to the Montana civil air patrol from the department of military affairs in accordance with 10-3-802;

(vi) annual reports on statewide election security from the secretary of state in accordance with 13-1-205;

(vii) a report regarding the youth voting program, if requested, from the secretary of state in accordance with 13-22-108;

(viii) a report from the commissioner of political practices in accordance with 13-37-120;

(ix) a report on retirement system trust investments from the board of investments in accordance with 17-6-230;

(x) actuarial valuations and other reports from the public employees' retirement board in accordance with 19-2-405 and 19-3-117;

(xi) actuarial valuations and other reports from the teachers' retirement board in accordance with 19-20-201 and 19-20-216;

(xii) a report on the reemployment of retired members of the teachers' retirement system from the teachers' retirement board in accordance with 19-20-732; and

(xiii) changes, if any, affecting filing-office rules under the Uniform Commercial Code from the secretary of state in accordance with 30-9A-527;

(c) reports to the children, families, health, and human services interim committee, including:

(i) performance data from the department of public health and human services in accordance with 2-15-2225;

(ii) quarterly reports on data requirements from the department of public health and human services in accordance with 5-12-303;

(iii) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

(iv) Montana HELP Act workforce development reports from the department of public health and human services in accordance with 39-12-103;

(v) annual reports from the child and family ombudsman in accordance with 41-3-1211;

(vi) reports on activities and recommendations on child protective services activities, if required, from the child and family ombudsman in accordance with 41-3-1215;

(vii) reports on the out-of-state placement of high-risk children with multiagency service needs from the department of public health and human services in accordance with 52-2-311;

(viii) private alternative adolescent residential and outdoor programs reports from the department of public health and human services in accordance with 52-2-803;

(ix) an annual Montana parents as scholars program report from the department of public health and human services in accordance with 53-4-209;

(x) provider rate, medicaid waiver, or medicaid state plan change reports from the department of public health and human services in accordance with 53-6-101;

(xi) a report concerning mental health managed care services, if managed care is in place, from the advisory council in accordance with 53-6-710;

(xii) quarterly medicaid reports related to expansion from the department of public health and human services in accordance with 53-6-1325;

(xiii) annual Montana developmental center reports from the department of public health and human services in accordance with 53-20-225; and

(xiv) annual children's mental health outcomes from the department of public health and human services in accordance with 53-21-508;

(xv) suicide reduction plans from the department of public health and human services in accordance with 53-21-1102;

(d) reports to the economic affairs interim committee, including:

(i) the annual state compensation insurance fund budget from the board of directors in accordance with 5-5-223 and 39-71-2363;

(ii) general marijuana regulation reports from the department of revenue in accordance with 16-12-110(3);

(iii) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(3);

(iv) annual reports on complaints against physicians certifying medical marijuana use from the board of medical examiners in accordance with 16-12-532(4);

(v) an annual report on the administrative rate required from the department of commerce from the Montana heritage preservation and development commission in accordance with 22-3-1002;

(vi) state fund reports from the insurance commissioner, if required, in accordance with 33-1-115;

(vii) risk-based capital reports, if required, from the state fund in accordance with 33-1-115 and 39-71-2375;

(viii) annual reinsurance reports from the Montana reinsurance association board required in accordance with 33-22-1308;

(ix) reports from the department of labor and industry concerning board attendance in accordance with 37-1-107;

(x) annual reports on physician complaints related to medical marijuana from the board of medical examiners in accordance with 37-3-203;

(xi) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

(xii) status reports on the special revenue account and fees charged as a funding source from the board of funeral service in accordance with 37-19-204;

(xiii) unemployment insurance program integrity act reports from the department of labor and industry in accordance with 39-15-706;

(xiv) status reports on the distressed wood products industry revolving loan program from the department of commerce in accordance with 90-1-503;

(e) reports to the education interim committee, including:

(i) reemployment of retired teachers, specialists, and administrators reports from the retirement board in accordance with 19-20-732;

(ii) a report on participation in the interstate compact on educational opportunity for military children in accordance with 20-1-231;

(iii) grow your own grant program reports from the commissioner of higher education in accordance with 20-4-601;

(iv) standards of accreditation proposals and economic impact statements from the board of public education in accordance with 20-7-101;

(v) advanced opportunity program reports from the board of public education in accordance with 20-7-1506;

(vi) progress on transformational learning plans from the board of public education in accordance with 20-7-1602;

(vii) budget amendments, if needed, from school districts in accordance with 20-9-161;

(viii) annual Montana resident student financial aid program reports from the commissioner of higher education in accordance with 20-26-105;

(ix) a historic preservation office report from the historic preservation officer in accordance with 22-3-423; and

(x) interdisciplinary child information agreement reports from the office of public instruction in accordance with 52-2-211;

(f) reports to the energy and telecommunications interim committee, including:

(i) the high-performance building report from the department of administration in accordance with 17-7-214;

(ii) an annual report from the consumer counsel in accordance with 69-1-222;

(iii) annual universal system benefits reports from utilities, electric cooperatives, and the department of revenue in accordance with 69-8-402;

(iv) small-scale hydroelectric power generation reports from the department of natural resources and conservation in accordance with 85-1-501; and

(v) geothermal reports from the Montana bureau of mines and geology in accordance with 90-3-1301;

(g) reports to the revenue interim committee, including:

(i) use of the qualified endowment tax credit report from the department of revenue in accordance with 15-1-230;

(ii) tax rates for the upcoming reappraisal cycle from the department of revenue in accordance with 15-7-111;

(iii) gray water property tax abatement usage reports from the department of revenue in accordance with 15-24-3211;

(iv) information about job growth incentive tax credits from the department of revenue in accordance with 15-30-2361;

(v) student scholarship contributions from the department of revenue in accordance with 15-30-3112;

(vi) tax havens from the department of revenue in accordance with 15-31-322;

(vii) media production tax credit economic impact reports from the department of commerce in accordance with 15-31-1011;

(viii) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(5);

(ix) complaints against physicians certifying use of medical marijuana from the board of medical examiners in accordance with 16-12-532(5); and

(x) reports that actual or projected receipts will result in less revenue than estimated from the office of budget and program planning, if necessary, in accordance with 17-7-140;

(h) reports to the transportation interim committee, including:

(i) biodiesel tax refunds from the department of transportation in accordance with 15-70-433;

(ii) cooperative agreement negotiations from the department of transportation in accordance with 15-70-450;

(iii) an annual alternative project delivery contracting report from the department of transportation in accordance with 60-2-119; and

(iv) a special fuels inspection report from the department of transportation in accordance with 61-10-154;

(i) reports to the environmental quality council, including:

(i) compliance and enforcement reports required in accordance with 75-1-314;

(ii) the state solid waste management and resource recovery plan, every 5 years, from the department of environmental quality in accordance with 75-10-111;

(iii) annual orphan share reports from the department of environmental quality in accordance with 75-10-743;

(iv) Libby asbestos superfund oversight committee reports in accordance with 75-10-1601;

(v) annual subdivision sanitation reports from the department of environmental quality in accordance with 76-4-116;

(vi) state trust land accessibility reports from the department of natural resources and conservation in accordance with 77-1-820;

(vii) biennial land banking reports and annual state land cabin and home site sales reports from the department of natural resources and conservation in accordance with 77-2-366;

(viii) biennially invasive species reports from the departments of fish, wildlife, and parks and natural resources and conservation in accordance with 80-7-1006;

(ix) annual upper Columbia conservation commission reports in accordance with 80-7-1026;

(x) annual invasive species council reports in accordance with 80-7-1203;

(xi) sand and gravel reports, if an investigation is completed, in accordance with 82-2-701;

(xii) annual sage grouse population reports from the department of fish, wildlife, and parks in accordance with 87-1-201;

(xiii) annual gray wolf management reports from the department of fish, wildlife, and parks in accordance with 87-1-901;

(xiv) biennial Tendoy Mountain sheep herd reports from the department of fish, wildlife, and parks in accordance with 87-2-702;

(xv) wildlife habitat improvement project reports from the department of fish, wildlife, and parks in accordance with 87-5-807; and

(xvi) annual sage grouse oversight team activities and staffing reports in accordance with 87-5-918;

(j) reports to the water policy interim committee, including:

(i) drought and water supply advisory committee reports in accordance with 2-15-3308;

(ii) total maximum daily load reports from the department of environmental quality in accordance with 75-5-703;

(iii) state water plans from the department of natural resources and conservation in accordance with 85-1-203;

(iv) small-scale hydroelectric power generation reports from the department of natural resources and conservation in accordance with 85-1-501;

(v) renewable resource grant and loan program reports from the department of natural resources and conservation in accordance with 85-1-621;

(vi) quarterly adjudication reports from the department of natural resources and conservation and the water court in accordance with 85-2-281;

(vii) water reservation reports from the department of natural resources and conservation in accordance with 85-2-316;

(viii) instream flow reports from the department of fish, wildlife, and parks in accordance with 85-2-436; and

(ix) ground water investigation program reports from the bureau of mines and geology in accordance with 85-2-525;

(k) reports to the local government interim committee, including:

(i) sand and gravel, if an investigation is completed, in accordance with 82-2-701;

(ii) assistance to local governments on federal land management proposals from the department of commerce in accordance with 90-1-182; and

(iii) emergency financial assistance to local government reports from the department of commerce, if requests are made, in accordance with 90-6-703(2);

(l) reports to the state-tribal relations committee, including:

(i) reports from the missing indigenous persons review commission in accordance with 2-15-2018;

(ii) the Montana Indian language preservation program report from the state-tribal economic development commission in accordance with 20-9-537;

(iii) reports from the missing indigenous persons task force in accordance with 44-2-411;

(iv) a decennial economic contributions and impacts of Indian reservations report from the department of commerce in accordance with 90-1-105;

(v) state-tribal economic development commission activities reports from the state-tribal economic development commission in accordance with 90-1-132; and

(vi) state-tribal economic development commission reports provided regularly by the state director of Indian affairs in accordance with 90-11-102.

~~(4) (a) Except as provided in subsections (4)(b) and (6) and unless otherwise required by law, a report made to the legislature in accordance with subsection (3) may be provided orally before September 1 of each year preceding the convening of a regular session of the legislature and in accordance with 5-11-210(1)(b).~~

~~(b) After receiving an oral report, an interim or administrative committee responsible for receiving the report may request a written report be filed with the legislature in accordance with 5-11-210(1)(a).~~

~~(c) This section may not be interpreted to preclude an interim or administrative committee from requesting additional information.~~

~~(5)~~*(4)* Reports to the legislature include multistate compact and agreement reports including:

(a) multistate tax compact reports in accordance with 15-1-601;

(b) interstate compact on educational opportunity for military children reports in accordance with 20-1-230 and 20-1-231;

(c) compact for education reports in accordance with 20-2-501;

(d) Western regional higher education compact reports in accordance with 20-25-801;

(e) interstate insurance product regulation compact reports in accordance with 33-39-101;

(f) interstate medical licensure compact reports in accordance with 37-3-356;

(g) interstate compact on juveniles reports in accordance with 41-6-101;

(h) interstate compact for adult offender supervision reports in accordance with 46-23-1115;

(i) vehicle equipment safety compact reports in accordance with 61-2-201;

(j) multistate highway transportation agreement reports in accordance with 61-10-1101; and

(k) western interstate nuclear compact reports in accordance with 90-5-201.

~~(6)~~*(5)* Reports, transfers, statements, assessments, recommendations and changes required under 17-7-138, 17-7-139, 17-7-140, 19-2-405, 19-2-407, 19-3-117, 19-20-201, 19-20-216, 20-7-101, 23-7-202, 33-1-115, and 39-71-2375 must be provided as soon as the report is published and publicly available. Reports required in subsections (2)(a), (2)(gg), (2)(hh), and (3)(b)(ix) must be provided following issuance of reports issued under Title 5, chapter 13."

Section 3. Section 17-5-1650, MCA, is amended to read:

"**17-5-1650. Annual report.** (1) By December 31 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. Except as provided in subsection (2), distribution to the legislature is accomplished by providing a copy to a legislator on request.

(2) Subject to ~~5-11-222(6)~~ *5-11-222(5)*, a report demonstrating the requirements of subsections (1) and (3) must be provided to the legislature in accordance with 5-11-210.

(3) The report must include:

(a) a statement of the board's current financial position with respect to its activities under this part;

(b) a summary of its activities pursuant to this part during the previous year including:

(i) a listing of the eligible governmental securities purchased by the board;

(ii) a listing of the bonds and notes sold by the board; and

(iii) a summary of the performance of any other investments of the board's funds received under this part;

(c) an estimate of the levels of activities for the next year; and

(d) a comparison of the activities during the previous year with the estimates of those activities that were made in the previous annual report."

Approved May 1, 2023

CHAPTER NO. 497

[SB 410]

AN ACT REMOVING CERTAIN DUTIES OF THE COURT ADMINISTRATOR; AND AMENDING SECTION 3-1-702, MCA.

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

Section 1. Section 3-1-702, MCA, is amended to read:

"**3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request and, if requested, in accordance with 5-11-210;

(3) to the extent possible, provide that current and future information technology applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521;

(4) recommend to the supreme court improvements in the judiciary;

(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

(6) administer state funding for district courts, as provided in chapter 5, part 9;

(7) administer the pretrial program provided for in 3-1-708;

(8) administer the treatment court support account provided for in 46-1-1115; *and*

(9) administer the judicial branch personnel plan~~; and~~

~~(10) perform other duties that the supreme court may assign~~."

Approved May 1, 2023

CHAPTER NO. 498

[HB 218]

AN ACT GENERALLY REVISING LAWS RELATED TO PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; PROVIDING ADDITIONAL REQUIREMENTS FOR LICENSURE; INCREASING THE FREQUENCY OF ONSITE INSPECTIONS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 52-2-805 AND 52-2-810, MCA.

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

Section 1. Section 52-2-805, MCA, is amended to read:

"**52-2-805. Requirements for licensure -- *restrictions -- rulemaking*.** (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~~ *shall* adopt rules that pertain to ensuring the health and safety of program participants*, including:*

(a) a procedure for a licensed program to report the use of a medical, chemical, or physical restraint or seclusion to the department within 1 business day after the day on which the use of the medical, chemical, or physical restraint or seclusion occurs;

(b) guidelines for written policies and procedures of the licensed program, including policies and procedures on suicide prevention and for implementation of the requirements and restrictions in subsections (3) and (4);

(c) a procedure for the department to review and approve the licensed program's policies and procedures; and

(d) a procedure for submitting a complaint about a licensed program to the department and law enforcement and a requirement that each licensed program publicly post information that describes how to submit a complaint about the licensed program to the department and law enforcement.

(3) A licensed program may not:

(a) use physical discipline or the threat of physical discipline as a punishment, deterrent, or incentive;

(b) deprive a youth of basic necessity or inherent right, including education;

(c) admit a youth who is under the age approved in the licensure or has a condition not allowed to be treated under the licensure; or

(d) sexually abuse, exploit, or harass an enrolled youth.

(4) A licensed program must:

(a) allow a parent or guardian to remove a youth from the licensed program; and

(b) unless otherwise prohibited by law or court order, facilitate weekly confidential video communication between a youth and the youth's parents, guardians, or foster parents.

(5) A licensed program shall provide a fixed number telephone to the child abuse hotline operated by the department that is readily available to enrolled participants 24 hours a day."

Section 2. Section 52-2-810, MCA, is amended to read:

"**52-2-810. 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~~ *shall* investigate and inspect the conditions and qualifications of any program seeking or holding a license under the provisions of this part.

(3) *(a)* The department shall conduct an onsite inspection of:

~~(a)~~*(i)* each program applying for a license; and

~~(b)~~*(ii)* each licensed program at least ~~once every 3 years~~ *semiannually*.

(b) The semiannual inspections of a licensed program must be unannounced.

(c) At least 50% of the youth enrolled in the program must be interviewed by department staff during each inspection. Program staff may not be present during these interviews.

(d) All records of a licensed program must be open to inspection by the department at all reasonable times.

(4) ~~Upon~~ *On* 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."

Approved May 17, 2023

CHAPTER NO. 499

[SB 245]

AN ACT REVISING MUNICIPAL ZONING LAWS; REQUIRING CERTAIN MUNICIPALITIES TO ALLOW MULTIPLE-UNIT DWELLINGS AND MIXED-USE DEVELOPMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-2-304 AND 76-2-309, 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 76-2-304, MCA, is amended to read:

"**76-2-304. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

(a) made in accordance with a growth policy; and

(b) designed to:

(i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and the general welfare; and

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) promotion of compatible urban growth;

(d) the character of the district and its peculiar suitability for particular uses; and

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) (a) In a municipality that is designated as an urban area by the United States census bureau with a population over 5,000 as of the most recent census, the city council or other legislative body of the municipality shall allow as a permitted use multiple-unit dwellings and mixed-use developments that include multiple-unit dwellings on a parcel or lot that:

(i) has a will-serve letter from both a municipal water system and a municipal sewer system; and

(ii) is located in a commercial zone.

(b) Zoning regulations in municipalities meeting the requirements of subsection (3)(a) may not include a requirement to provide more than:

(i) one off-street parking space for each unit and accessible parking spaces as required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.; or

(ii) an equivalent number of spaces required under subsection (3)(b)(i) provided through a shared parking agreement.

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

(a) "Mixed-use development" means a development consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to the first floor of buildings that are two or more stories

(b) "Multiple-unit dwelling" means a building designed for five or more dwelling units in which the dwelling units share a common separation like a ceiling or wall and in which access cannot be gained between units through an internal doorway, excluding common hallways."

Section 2. Section 76-2-309, MCA, is amended to read:

"**76-2-309. Conflict with other laws.** (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces~~;~~*,* require a lower height of building or ~~less~~ *a fewer* number of stories~~;~~*,* require a greater percentage of *a* lot to be left unoccupied~~;~~*,* or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part ~~shall~~ govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces~~;~~*,* require a lower height of building or a ~~less~~ *fewer* number of stories~~;~~*,* require a greater percentage of *a* lot to be left unoccupied~~;~~*,* or impose other higher standards than are required by the regulations made under authority of this part, *except for restrictions provided in 76-2-304(3),* the provisions of ~~such~~ *the other* statute or local ordinance or regulation ~~shall~~ govern."

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 municipal zoning regulations enacted or adopted on or before [the effective date of this act].

Approved May 17, 2023

CHAPTER NO. 500

[SB 382]

AN ACT CREATING THE MONTANA LAND USE PLANNING ACT; REQUIRING CITIES THAT MEET CERTAIN POPULATION THRESHOLDS TO UTILIZE THE LAND USE PLAN, MAP, ZONING REGULATIONS, AND SUBDIVISION REGULATIONS PROVIDED IN THE ACT; ALLOWING OTHER LOCAL GOVERNMENTS THE OPTION TO UTILIZE THE PROVISIONS OF THE ACT; REQUIRING PUBLIC PARTICIPATION DURING THE DEVELOPMENT, ADOPTION, OR AMENDMENT OF A LAND USE PLAN, MAP, ZONING REGULATION, OR SUBDIVISION REGULATION; PROVIDING STRATEGIES TO MEET POPULATION PROJECTIONS; PROVIDING FOR CONSIDERATION OF FACTORS SUCH AS HOUSING, LOCAL FACILITIES, ECONOMIC DEVELOPMENT, NATURAL RESOURCES, ENVIRONMENT, AND NATURAL HAZARDS WHEN DEVELOPING A LAND USE PLAN, MAP, AND ZONING REGULATION; PROVIDING FOR A PROCEDURE

TO REVIEW SUBDIVISIONS AND APPROVE FINAL PLATS; PROVIDING FOR A LOCAL GOVERNING BODY TO COLLECT FEES; PROVIDING AN APPEALS PROCESS, ENFORCEMENT MECHANISMS, AND PENALTIES; PROVIDING DEFINITIONS; REPEALING SECTIONS 7-21-1001, 7-21-1002, AND 7-21-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Short Title. [Sections 1 through 38] may be cited as the "Montana Land Use Planning Act".

Section 2. Legislative purpose, findings, and intent. (1) It is the purpose of [sections 1 through 38] to promote the health, safety, and welfare of the people of Montana through a system of comprehensive planning that balances private property rights and values, public services and infrastructure, the human environment, natural resources, and recreation, and a diversified and sustainable economy.

(2) The legislature finds that coordinated and planned growth will encourage and support:

(a) sufficient housing units for the state's growing population that are attainable for citizens of all income levels;

(b) the provision of adequate public services and infrastructure in the most cost-effective manner possible, shared equitably among all residents, businesses, and industries;

(c) the natural environment, including wildlife and wildlife habitat, sufficient and clean water, and healthy air quality;

(d) agricultural, forestry, and mining lands for the production of food, fiber, and minerals and their economic benefits;

(e) the state's economy and tax base through job creation, business development, and the revitalization of established communities;

(f) persons, property, infrastructure, and the economy against natural hazards, such as flooding, earthquake, wildfire, and drought; and

(g) local consideration, participation, and review of plans for projected population changes and impacts resulting from those plans.

(3) It is the legislature's intent that the comprehensive planning authorized in [sections 1 through 38]:

(a) provides the broadest and most comprehensive level of collecting data, identifying and analyzing existing conditions and future opportunities and constraints, acknowledging and addressing the impacts of development on each jurisdiction, and providing for broad public participation;

(b) serves as the basis for implementing specific land use regulations that are in substantial compliance with the local land use plan;

(c) provides for local government approval of development proposals in substantial compliance with the land use plan, based on information, analysis, and public participation provided during the development and adoption of the land use plan and implementing regulations; and

(d) allows for streamlined administrative review decisionmaking for site-specific development applications.

Section 3. Definitions. As used in [sections 1 through 38], unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

(2) "Applicant" means a person who seeks a land use permit or other approval of a development proposal.

(3) "Built environment" means man-made or modified structures that provide people with living, working, and recreational spaces.

(4) "Cash-in-lieu donation" is the amount equal to the fair market value of unsubdivided, unimproved land.

(5) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(6) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(7) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to [sections 1 through 38]. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(8) "Dwelling " means a building designed for residential living purposes, including single-unit, two-unit, and multi-unit dwellings.

(9) "Dwelling unit" means one or more rooms designed for or occupied exclusively by one household.

(10) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(11) "Final plat" means the final drawing of the subdivision and dedication required by [sections 1 through 38] to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in [sections 1 through 38] and in regulations adopted pursuant to [sections 1 through 38].

(12) "Four-unit dwelling" or "fourplex" means a building designed for four attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(13) "Immediate family" means a spouse, children by blood or adoption, and parents.

(14) "Irrigation district" means a district established pursuant to Title 85, chapter 7.

(15) "Jurisdictional area" or "jurisdiction" means the area within the boundaries of the local government. For municipalities, the term includes those areas the local government anticipates may be annexed into the municipality over the next 20 years.

(16) "Land use permit" means an authorization to complete development in conformance with an application approved by the local government.

(17) "Land use plan" means the land use plan and future land use map adopted in accordance with [sections 1 through 38].

(18) "Land use regulations" means zoning, zoning map, subdivision, or other land use regulations authorized by state law.

(19) "Local governing body" or "governing body" means the elected body responsible for the administration of a local government.

(20) "Local government" means a county, consolidated city-county, or an incorporated municipality to which the provisions of [sections 1 through 38] apply as provided in [section 5].

(21) "Manufactured housing" means a dwelling for a single household, built offsite in a factory that is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(22) "Ministerial permit" means a permit granted upon a determination that a proposed project complies with the zoning map and the established standards set forth in the zoning regulations. The determination must be based on objective standards, involving little or no personal judgment, and must be issued by the planning administrator.

(23) "Multi-unit dwelling" means a building designed for five or more attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(24) "Permitted use" means a use that may be approved by issuance of a ministerial permit.

(25) "Planning administrator" means the person designated by the local governing body to review, analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other development applications as required in [sections 1 through 38].

(26) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(27) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(28) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of [sections 1 through 38], the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(29) "Single-room occupancy development" means a development with dwelling units in which residents rent a private bedroom with a shared kitchen and bathroom facilities.

(30) "Single-unit dwelling" means a building designed for one dwelling unit that is detached from any other dwelling unit.

(31) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(32) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

(33) "Subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in [section 34].

(34) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(35) "Three-unit dwelling" or "triplex" means a building designed for three attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(36) "Two-unit dwelling" or "duplex" means a building designed for two attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway.

Section 4. Planning commission. (1) (a) Each local government shall establish, by ordinance or resolution, a planning commission.

(b) Any combination of local governments may create a multi-jurisdiction planning commission or join an existing commission pursuant to an interlocal agreement.

(c) (i) Any combination of legally authorized planning boards, zoning commissions, planning and zoning commissions, or boards of adjustment existing prior to [the effective date of this act] may be considered duly constituted under [sections 1 through 38] as a planning commission by agreement of the governing bodies of each jurisdiction represented on the planning commission.

(ii) If more than one legally authorized planning board, zoning commission, or planning and zoning commission exists within a jurisdiction, the governing bodies of each jurisdiction may agree to:

(A) designate, combine, consolidate, or modify one or more of the authorized boards or commissions as the planning commission; or

(B) create a new planning commission pursuant to this section and disband the existing boards and commissions.

(2) (a) (i) Each planning commission must consist of an odd number of no fewer than three voting members who are confirmed by majority vote of each local governing body.

(ii) Each jurisdiction must be equally represented in the membership of a multi-jurisdiction planning commission.

(b) The planning commission shall meet at least once every 6 months.

(c) Minutes must be kept of all meetings of the planning commission and all meetings and records must be open to the public.

(d) A majority of currently appointed voting members of the planning commission constitutes a quorum. A quorum must be present for the planning commission to take official action. A favorable vote of at least a majority of the quorum is required to authorize an action at a regular or properly called special meeting.

(e) The ordinance, resolution, or interlocal agreement creating the planning commission must set forth the requirements for appointments, terms, qualifications, removal, vacancies, meetings, notice of meetings, officers, reimbursement of costs, bylaws, or any other requirement determined necessary by the local governing body.

(3) (a) Except as set forth in subsection (3)(b), the planning commission shall review and make recommendations to the local governing body regarding the development, adoption, amendment, review, and approval or denial of the following documents:

(i) the land use plan and future land use map as provided in [section 7];

(ii) zoning regulations and map as provided in [sections 18 through 24];

(iii) subdivision regulations as provided in [sections 25 through 34]; and

(iv) any other legislative land use planning document the local governing body designates.

(b) In accordance with [section 37], the planning commission shall hear and decide appeals from any site-specific land use decisions made by the planning

administrator pursuant to the adopted regulations described in subsection (3)(a). Decisions of the planning commission may be appealed to the local governing body as provided in [section 37].

(4) The planning commission may be funded pursuant to 76-1-403 and 76-1-404.

Section 5. Applicability and compliance. (1) A municipality with a population at or exceeding 5,000 located within a county with a population at or exceeding 70,000 in the most recent decennial census shall comply with the provisions of [sections 1 through 38].

(2) (a) Except as provided in subsection (2)(b), any municipality that meets the population thresholds of subsection (1) on [the effective date of this act] shall comply with the provisions of [sections 1 through 38] within 3 years of [the effective date of this act].

(b) A municipality that has adopted a growth policy within 5 years prior to [the effective date of this act] shall comply with the provisions of [sections 1 through 38] within 5 years of the date that the growth policy was adopted or within the deadline established in subsection (2)(a), whichever occurs later.

(c) A municipality that meets the population thresholds of subsection (1) on any decennial census completed after [the effective date of this act] shall comply with the provisions of [sections 1 through 38] by December 31 of the third year after the date of the decennial census.

(3) (a) A local government that is not required to comply with the provisions of [sections 1 through 38] may decide to comply with the provisions of [sections 1 through 38] by an affirmative vote of the local governing body. After an affirmative vote, the governing body shall comply with the provisions of [sections 1 through 38] by December 31 of the fifth year after the date of the vote.

(b) A local government that votes pursuant to subsection (3)(a) to comply with the provisions of [sections 1 through 38] may subsequently decide to not comply with the provisions of [sections 1 through 38] by an affirmative vote.

(4) A local government that complies with [sections 1 through 38] is not subject to any provision of Title 76, chapters 1, 2, 3, or 8.

Section 6. Public participation. (1) (a) A local government shall provide continuous public participation when adopting, amending, or updating a land use plan or regulations pursuant to [sections 1 through 38].

(b) Public participation in the adoption, amendment, or update of a land use plan or implementing regulations must provide for, at a minimum:

(i) dissemination of draft documents;

(ii) an opportunity for written and verbal comments;

(iii) public meetings after effective notice;

(iv) electronic communication regarding the process, including online access to documents, updates, and comments; and

(v) an analysis of and response to public comments.

(2) A local government shall document and retain all public outreach and participation performed as part of the administrative record in accordance with the retention schedule published by the secretary of state.

(3) (a) A local government may decide the method for providing:

(i) general public notice and participation in the adoption, amendment, or update of a land use plan or regulation; and

(ii) notice of written comment on applications for land use permits pursuant to [sections 1 through 38].

(b) All notices must clearly specify the nature of the land use plan or regulation under consideration, what type of comments the local government is seeking from the public, and how the public may participate.

(c) The local government shall document what methods it used to provide continuous participation in the development, adoption, or update of a land use plan or regulation and shall document all comments received.

(d) The department of commerce established in 2-15-1801 and functioning pursuant to 90-1-103 shall develop a list of public participation methods and best practices for use by local governments in developing, adopting, or updating a land use plan or regulations.

(4) Throughout the adoption, amendment, or update of the land use plan or regulation processes, a local government shall emphasize that:

(a) the land use plan is intended to identify the opportunities for development of land within the planning area for housing, businesses, agriculture, and the extraction of natural resources, while acknowledging and addressing the impacts of that development on adjacent properties, the community, the natural environment, public services and facilities, and natural hazards;

(b) the process provides for continuous and extensive public notice, review, comment, and participation in the development of the land use plan or regulation;

(c) the final adopted land use plan, including amendments or updates to the final adopted land use plan, comprises the basis for implementing land use regulations in substantial compliance with the land use plan; and

(d) the scope of and opportunity for public participation and comment on site-specific development in substantial compliance with the land use plan must be limited only to those impacts or significantly increased impacts that were not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, or subdivision regulations.

(5) The local governing body shall adopt a public participation plan detailing how the local government will meet the requirements of this section.

Section 7. Adoption or amendment of land use plan and future land use map. (1) The local governing body shall adopt or amend by resolution a land use plan and future land use map in accordance with [sections 7 through 17] only after consideration by and on the recommendation of the planning commission.

(2) Prior to making a recommendation to the governing body to adopt or amend a land use plan and future land use map, the planning commission shall:

(a) provide public notice and participation in accordance with [section 6]; and

(b) accept, consider, and respond to public comment on the proposed land use plan and future land use map. All public comment must be part of the administrative record transmitted to the governing body.

(3) After meeting the requirements of subsection (2), the planning commission shall make a final recommendation to the governing body to adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the proposed land use plan and future land use map.

(4) The governing body shall incorporate any existing neighborhood, area, or plans adopted pursuant to Title 76, chapter 1, that meet the requirements of [sections 1 through 38] into the land use plan and future land use map.

(5) (a) The governing body shall consider the recommendation of the planning commission to adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the proposed land use plan and future land use map.

(b) After providing public notice and participation in accordance with [section 6], the governing body may adopt, with any revisions the local governing body considers appropriate, or reject the land use plan and future

land use map or any amendment to the proposed land use plan and future land use map proposed by the planning commission.

(6) An amendment to a land use plan or future land use map may be initiated:

(a) by majority vote of the governing body;

(b) on petition of at least 15% of the electors of the local government jurisdiction to which the plan applies, as registered at the last general election; or

(c) by a property owner applying for a zoning, subdivision, or other land use permit.

(7) (a) After the initiation of an amendment to a land use plan or future land use map allowed in subsection (6), the planning commission shall make a preliminary determination of whether the proposed land use plan or future land use map amendment results in new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessment conducted in the development of the land use plan.

(b) If the planning commission finds new or increased impacts from the proposed land use plan or future land use map amendment, the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission with the opportunity to consider all potential impacts resulting from the amendment before proceeding under subsection (2).

(8) The governing body may not amend the land use plan or future land use map unless:

(a) the amendment is found in substantial compliance with the land use plan; and

(b) the potential impacts resulting from development in substantial compliance with the proposed amendment have been made available for public review and comment and have been fully considered by the governing body.

Section 8. Update of land use plan or future land use map. (1) After a local government adopts a land use plan and future land use map in accordance with [section 7], the land use plan and future land use map must be reviewed by the planning commission every fifth year after adoption to determine whether an update to the land use plan and future land use map must be performed. The planning commission shall:

(a) make a preliminary determination regarding the existence of new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed when the land use plan and future land use map were previously adopted;

(b) provide public notice and participation in accordance with [section 6]; and

(c) accept, consider, and respond to public comment on the review of the land use plan and future land use map. All public comment must be part of the administrative record transmitted to the governing body.

(2) (a) If the planning commission finds new or increased impacts under subsection (1), the planning commission shall recommend an update to the land use plan, future land use map, or both.

(b) If the planning commission finds no new or increased impacts under subsection (1), the planning commission shall make a recommendation to the governing body that no update to the land use plan or future land use map is necessary.

(3) After receiving the recommendation of the planning commission, the governing body may direct that an update of the land use plan, future land use

map, or both be completed or may readopt the current land use plan, future land use map, or both.

(4) (a) In developing, drafting, and considering an update to the land use plan or future land use map, the planning commission shall follow the process set forth in [section 7] with respect to the changes proposed to the land use plan or future land use map.

(b) If the planning commission finds new or increased impacts resulting from the land use plan or future land use map, the local government shall collect additional data and conduct additional analysis necessary to provide the governing body and the public with the opportunity to comment on and consider all potential impacts resulting from an update to the land use plan or future land use map.

(5) At any time before an update is required after a review under subsection (1), the local governing body may direct that an update to the land use plan or future land use map be prepared for consideration by the planning commission and for recommendation to the governing body.

(6) Once an update to the land use plan or future land use map is adopted or the land use plan or future land use map is readopted, the information and analysis contained within the land use plan and future land use map must be considered accurate for the purposes of making site-specific development decisions in substantial compliance with the land use plan and future land use map.

Section 9. Existing conditions and population projections. (1) The land use plan must include, at a minimum, inventories and descriptions of existing conditions of housing, local services and facilities, economic development, natural resources, environment, and hazards, and land use within the jurisdictional boundaries of the land use plan.

(2) As set forth in [sections 10 through 17], the land use plan must include, at minimum, a description, map, and analysis of how the jurisdiction will accommodate its projected population over the next 20 years and the expected impacts of the development in the areas of housing, local services and facilities, economic development, natural resources, environment, and hazards.

(3) The inventories and descriptions in the plan must be based on up-to-date surveys, maps, diagrams, charts, descriptive material, studies, and reports necessary to explain and supplement the analysis of each section of the land use plan.

(4) (a) A jurisdiction shall use demographics provided by:

(i) the most recent decennial census or census estimate of the United States census bureau; and

(ii) population projections for a 20-year period based on permanent and seasonal population estimates:

(A) provided by demographics published by the department of commerce;

(B) generated by the local government; or

(C) produced by a professional firm specializing in projections.

(b) When a population projection is not available, population projections for the jurisdiction must be reflective of the area's proportional share of the total county population and the total county population growth.

Section 10. Housing. (1) A local governing body shall identify and analyze existing and projected housing needs for the projected population of the jurisdiction and provide regulations that allow for the rehabilitation, improvement, or development of the number of housing units needed, as identified in the land use plan and future land use map, including:

(a) a quantification of the jurisdiction's existing and projected needed housing types, including location, age, condition, and occupancy required to accommodate existing and estimated population projections;

(b) an inventory of sites, including zoned, unzoned, vacant, underutilized, and potential redevelopment sites, available to meet the jurisdiction's needed housing types;

(c) an analysis of any constraints to housing development, such as zoning, development standards, and infrastructure needs and capacity, and the identification of market-based incentives that may affect or encourage the development of needed housing types; and

(d) a detailed description of what actions the jurisdiction may take to accommodate the projected needed housing types identified in subsection (1)(a).

(2) The housing section of the land use plan and future land use map may incorporate by reference any information or policies identified in other housing needs assessments adopted by the governing body.

(3) If, after performing the analysis required in subsection (1), the local government determines that the total needed housing types may not be met due to lack of resources, development sites, infrastructure capacity, or other documented constraints, the local government shall establish the minimum number of housing units that may be rehabilitated, improved, or developed within the jurisdiction over the 20-year planning period and the actions the local government may take to remove constraints to the development of those units over that period.

(4) Progress toward the construction of the housing units identified as needed to meet projected housing needs during the 20-year planning period of the land use plan must be documented at each fifth year review of the land use plan as required in [section 8].

(5) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 11. Local services and facilities. (1) The land use plan must:

(a) determine the existing and anticipated levels of public safety and emergency services necessary to serve the projected population of the jurisdiction, including law enforcement, fire protection, emergency management system agencies, and local health care organizations;

(b) contain an inventory and map of existing fire protection, law enforcement, and emergency service jurisdictional areas and anticipated response times, a description of mutual aid or cooperative service agreements, and the location of hospitals or clinics in the jurisdiction;

(c) identify capital and service improvements for fire, law enforcement, emergency services, and health services for the jurisdictional area necessary to meet the projected population;

(d) determine the existing capacity, existing deficiencies, planned expansion, and anticipated levels of utility services necessary to serve the projected population in the jurisdiction, including water, wastewater, and storm water systems, solid waste disposal, and other utility services, as identified by the local government;

(e) contain an inventory and map of all utility service areas, system networks, and facilities;

(f) identify local utility capital and service improvements for the jurisdictional area necessary to meet the projected population;

(g) determine the existing capacity, existing deficiencies, planned expansion, and anticipated improvements to the transportation network serving the jurisdictional area necessary to serve the projected population in the jurisdiction;

(h) contain an inventory and classification map of all existing and planned roads within the jurisdictional area, including major highways, secondary highways, and local routes, all non-motorized routes, including bike lanes and pedestrian thoroughfares, and all public transit systems and facilities; and

(i) identify planned capital and service transportation improvements necessary to serve the projected population.

(2) The local government shall:

(a) coordinate with school districts within the jurisdiction to determine the existing capacity of, planned expansion of, and anticipated improvements necessary for the local K-12 school system to serve the projected population in the jurisdiction; and

(b) request that the local school district provide any inventory and maps of existing K-12 educational facilities within the jurisdictional area and identify any capital and service improvements necessary to meet the projected population.

(3) The local government may include an analysis of existing capacity and service levels, planned expansions of, and anticipated improvements necessary to provide other services to the projected population in the jurisdiction.

(4) The local government may incorporate by reference any information or policies identified in other relevant local services or facilities assessments adopted by the local governing body, such as a capital improvements plan or an impact fee study.

(5) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 12. Economic development. (1) The land use plan must:

(a) assess existing and potential commercial, industrial, small business, and institutional enterprises in the jurisdiction, including the types of sites and supporting services needed by the enterprises;

(b) summarize job composition and trends by industry sector, including existing labor force characteristics and future labor force requirements, for existing and potential enterprises in the jurisdiction;

(c) assess the extent to which local characteristics, assets, and resources support or constrain existing and potential enterprises, including access to transportation to market goods and services, and assess historic, cultural, and scenic resources and their relationship to private sector success in the jurisdiction;

(d) inventory sites within the jurisdiction, including zoned, unzoned, vacant, underutilized, and potentially redeveloped sites, available to meet the jurisdiction's economic development needs;

(e) assess the adequacy of existing and projected local facilities and services, schools, housing stock, and other land uses necessary to support existing and potential commercial, industrial, and institutional enterprises; and

(f) assess the financial feasibility of supporting anticipated economic growth in the jurisdiction.

(2) The local government may incorporate by reference any information or policies identified in other relevant economic development assessments.

(3) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 13. Natural resources, environment, and hazards. (1) The land use plan must:

(a) include inventories and maps of natural resources within the jurisdiction, including but not limited to agricultural lands, agricultural water

user facilities, minerals, sand and gravel resources, forestry lands, and other natural resources identified by the local government;

(b) describe the natural resource characteristics of the jurisdictional area, including a summary of historical natural resource utilization, data on existing utilization, and projected future trends;

(c) include an inventory, maps, and description of the natural environment of the jurisdictional area, including a summary of important natural features and the conditions of and real and potential threats to soils, geology, topography, vegetation, surface water, groundwater, aquifers, floodplains, scenic resources, wildlife, wildlife habitat, wildlife corridors, and wildlife nesting sites within the jurisdiction; and

(d) include maps of, identify factors related to, and describe natural hazards within the jurisdictional area, including flooding, fire, earthquakes, steep slopes and other known geologic hazards and other natural hazards identified by the jurisdiction, with a summary of past significant events resulting from natural hazards that includes:

(i) a description of land use constraints resulting from natural hazards;

(ii) a description of the efforts that have been taken within the local jurisdiction to mitigate the impact of natural hazards; and

(iii) a description of the role that natural resources and the environment play in the local economy.

(2) The local government may incorporate by reference any information or policies identified in other relevant assessments of natural resources, environment, or hazards.

(3) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 14. Land use and future land use map. (1) A land use plan must include a future land use map and a written description of the proposed general distribution, location, and extent of residential, commercial, mixed, industrial, agricultural, recreational, and conservation uses of land and other categories of public and private uses, as determined by the local government.

(2) The future land use map must reflect the anticipated and preferred pattern and intensities of development for the jurisdiction over the next 20 years, based on the information, analysis, and public input collected, considered, and relevant to the population projections for and economic development of the jurisdiction and the housing and local services needed to accommodate those projections, while acknowledging and addressing the natural resource, environment, and natural hazards of the jurisdiction.

(3) The future land use map may not confer any authority to regulate what is not otherwise specifically authorized in [sections 1 through 38].

(4) The future land use map and the written description must include:

(a) a statement of intent describing the jurisdiction's applicable zoning, subdivision, and other land use regulations;

(b) descriptions of existing and future land uses, including:

(i) categories of public and private use;

(ii) general descriptions of use types and densities of those uses;

(iii) general descriptions of population; and

(iv) other aspects of the built environment;

(c) geographic distribution of future land uses in the jurisdiction, anticipated over a 20-year planning period that specifically demonstrate:

(i) adequate land to support the projected population in all land use types in areas where local services can be adequately and cost-effectively provided for that population;

(ii) adequate sites to accommodate the type and supply of housing needed for the projected population; and

(iii) areas of the jurisdiction that are not generally suitable for development and the reason, based on the constraints identified through the land use plan analysis;

(d) a statement acknowledging areas within the jurisdiction known to be subject to covenants, codes, and restrictions that may limit the type, density, or intensity of housing development projected in the future land use map; and

(e) areas of or adjacent to the jurisdiction subject to increased growth pressures, higher development densities, or other urban development influences.

(5) To the greatest extent possible, local governments shall create compatibility in the land use plans and future land use map in those areas identified in subsection (4)(e).

(6) The land use plan may:

(a) provide information required by a federal land management agency for the local governing body to establish or maintain coordination or cooperating agency status; and

(b) incorporate by reference any information or policies identified in other relevant assessments adopted by the local governing body, such as a pre-disaster mitigation plan or wildfire protection plan.

(7) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 15. Area plans. (1) A local governing body may adopt area plans for a portion of the jurisdiction to provide a more localized analysis of all or any part of a land use plan. An area plan may include but is not limited to a neighborhood plan, a corridor plan, or a subarea plan.

(2) The adoption, amendment, or update of an area plan must follow the same process as a land use plan provided for in [sections 7 through 17] and may be adopted as an amendment to the land use plan.

(3) The area plan must be in substantial compliance with the land use plan. To the extent an area plan is inconsistent with the land use plan, the land use plan controls.

Section 16. Issue plans. (1) A local governing body may adopt issue plans for all or part of a jurisdiction that provide a more detailed or thorough analysis for any component of the land use plan.

(2) The adoption, amendment, or update of an issue plan must follow the same process as a land use plan provided for in [sections 7 through 17].

(3) If an issue plan covers the jurisdictional area of the land use plan, the issue plan may serve as the detailed analysis required in the land use plan.

Section 17. Implementation. (1) The land use plan and future land use map is not a regulatory document and must include an implementation section that:

(a) establishes meaningful and predictable implementation measures for the use and development of land within the jurisdiction based on the contents of the land use plan and future land use map;

(b) provides meaningful direction for the content of more detailed land use regulations and future land use maps; and

(c) requires identification of those programs, activities, actions, or land use regulations that may be part of the overall strategy of the jurisdiction for implementing the land use plan.

(2) The implementation section of the land use plan must include:

(a) if the local jurisdiction does not have current zoning regulations, a schedule by which zoning regulations and a zoning map will be adopted in accordance with the deadlines set forth in [section 5];

(b) if the local jurisdiction has current zoning regulations, an analysis of whether any inconsistencies exist between current zoning regulations and the land use plan and future land use map, including a map of the inconsistencies. If inconsistencies exist, the local government shall identify:

(i) specific implementation actions necessary to amend the zoning regulations and the zoning map to bring the zoning regulations and zoning map into substantial compliance with the land use plan and future land use map;

(ii) a schedule for amending the zoning regulations and zoning map to be in substantial compliance with the land use plan and future land use map, in accordance with the deadlines set forth in [section 5];

(iii) a schedule for adopting a capital improvements program or for amending an existing capital improvements program to be in substantial compliance with the land use plan and future land use map;

(iv) a schedule for expanding or replacing public facilities and the anticipated costs and revenue sources proposed to meet those costs, which must be reflected in a jurisdiction's capital improvement program;

(v) if applicable, a schedule for updating the plan for extension of services required in 7-2-4732 to be in substantial compliance with the land use plan; and

(vi) a schedule for implementing any other specific actions necessary to achieve the components of the land use plan, including a timeframe or prioritization of each specific public action; and

(c) procedures for monitoring and evaluating the local government's progress toward meeting the implementation schedule.

Section 18. Authority to adopt local zoning regulations. (1) (a) A local government subject to [sections 1 through 38], within its respective jurisdiction, has the authority to and shall regulate the use of land in substantial compliance with its adopted land use plan by adopting zoning regulations.

(b) The governing body of a county or city has the authority to adopt zoning regulations in accordance with [sections 18 through 24] by an ordinance that substantially complies with 7-5-103 through 7-5-107.

(c) A municipality shall adopt zoning regulations for the portions of the jurisdictional area outside of the boundaries of the municipality that the governing body anticipates may be annexed into the municipality over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, zoning regulations on property outside the municipal boundaries may not apply or be enforced until those areas are annexed or are being annexed into the municipality.

(2) Local zoning regulations authorized in subsection (1) include but are not limited to ordinances prescribing the:

(a) uses of land;

(b) density of uses;

(c) types of uses;

(d) size, character, number, form, and mass of structures; and

(e) development standards mitigating the impacts of development, as identified and analyzed during the land use planning process and review and adoption of zoning regulations pursuant to [sections 1 through 38].

(3) The local government shall incorporate any existing zoning regulations adopted pursuant to Title 76, chapter 2, into the zoning regulations meeting the requirements of [sections 1 through 38].

(4) The local government shall adopt a zoning map for the jurisdiction in substantial compliance with the land use plan and future land use map and the zoning regulations adopted pursuant to this section, graphically illustrating the zone or zones that a property within the jurisdiction is subject to.

(5) The local government may provide for the issuance of permits as may be necessary for the implementation of [sections 1 through 38].

(6) (a) The zoning regulations and map must identify areas that may necessitate the denial of a development or a specific type of development, such as unmitigable natural hazards, insufficient water supply, inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds for the supply of the services.

(b) The regulations must prohibit development in the areas identified in subsection (6)(a) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the zoning regulations.

(c) Approved construction techniques or other mitigation measures described in subsection (6)(b) may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(7) The zoning regulations and map must mitigate the hazards created by development in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body. If the hazards cannot be mitigated, the zoning regulations and map must identify those areas where future development is limited or prohibited.

(8) The zoning regulations must allow for the continued use of land or buildings legal at the time that any zoning regulation, map, or amendment thereto is adopted, but the local government may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation, map, or amendment.

Section 19. Encouragement of development of housing. (1) The zoning regulations authorized in [section 18] must include a minimum of five of the following housing strategies, applicable to the majority of the area, where residential development is permitted in the jurisdictional area:

(a) allow, as a permitted use, for at least a duplex where a single-unit dwelling is permitted;

(b) zone for higher density housing near transit stations, places of employment, higher education facilities, and other appropriate population centers, as determined by the local government;

(c) eliminate or reduce off-street parking requirements to require no more than one parking space per dwelling unit;

(d) eliminate impact fees for accessory dwelling units or developments that include multi-unit dwellings or reduce the fees by at least 25%;

(e) allow, as a permitted use, for at least one internal or detached accessory dwelling unit on a lot with a single-unit dwelling occupied as a primary residence;

(f) allow for single-room occupancy developments;

(g) allow, as a permitted use, a triplex or fourplex where a single-unit dwelling is permitted;

(h) eliminate minimum lot sizes or reduce the existing minimum lot size required by at least 25%;

(i) eliminate aesthetic, material, shape, bulk, size, floor area, and other massing requirements for multi-unit dwellings or mixed-use developments or remove at least half of those requirements;

(j) provide for zoning that specifically allows or encourages the development of tiny houses, as defined in Appendix Q of the International Residential Code as it was printed on January 1, 2023;

(k) eliminate setback requirements or reduce existing setback requirements by at least 25%;

(l) increase building height limits for dwelling units by at least 25%;

(m) allow multi-unit dwellings or mixed-use development as a permitted use on all lots where office, retail, or commercial are primary permitted uses; or

(n) allow multi-unit dwellings as a permitted use on all lots where triplexes or fourplexes are permitted uses.

(2) If a local government's existing zoning ordinance adopted pursuant to Title 76, chapter 2, before [the effective date of this act] does not contain a zoning regulation that is listed as a regulation to be eliminated or reduced in subsection (1), that strategy is considered adopted by the local government.

(3) If the adoption of a housing strategy allowed in subsection (1) subsumes another housing strategy allowed in subsection (1), only one strategy may be considered to have been adopted by the local government.

Section 20. Limitations on zoning authority. (1) A local government acting pursuant to [sections 18 through 24] may not:

(a) treat manufactured housing units differently from any other residential units;

(b) include in a zoning regulation any requirement to:

(i) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(ii) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices, including a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices;

(c) prevent 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;

(d) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground;

(e) subject to subsection (2) and outside of incorporated municipalities, prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources identified in the land use plan, except that the use, development, or recovery may be reasonably conditioned or prohibited within residential zones;

(f) except as provided in subsection (3), treat the following differently from any other residential use of property:

(i) a foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623, if the home or facility provides care on a 24-hour-a-day basis;

(ii) a community residential facility serving eight or fewer persons, if the facility provides care on a 24-hour-a-day basis; or

(iii) a family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7;

(g) except as provided in subsection (3), apply any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children; or

(h) prohibit any existing agricultural activities or force the termination of any existing agricultural activities outside the boundaries of an incorporated city, including agricultural activities that were established outside the corporate limits of a municipality and thereafter annexed into the municipality.

(2) Regulations that condition or prohibit uses pursuant to subsection (1)(e) must be in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432.

(3) Except for a day-care home registered by the department of public health and human services, a local government may impose zoning standards and conditions on any type of home or facility identified in subsections (1)(f) and (1)(g) if those zoning standards and conditions do not conflict with the requirements of subsections (1)(f) and (1)(g).

Section 21. Adoption and amendment of zoning regulations. (1) (a) The governing body shall adopt or amend a zoning regulation or map only after consideration by and on the recommendation of the planning commission.

(b) An amendment to an adopted zoning regulation or map may be initiated:

(i) by majority vote of the governing body;

(ii) on petition of at least 15% of the electors of the local government jurisdiction to which the regulations apply, as registered at the last general election; or

(iii) by a property owner, as related to an application for any zoning, subdivision, or other land use permit or approval.

(2) Prior to making a recommendation to the governing body to adopt or amend a zoning regulation or map, the planning commission shall:

(a) provide public notice and participation in accordance with [section 6];

(b) accept, consider, and respond to public comment on the proposed zoning regulation, map, or amendment. All public comment must be part of the administrative record transmitted to the governing body.

(c) make a preliminary determination as to whether the zoning regulation and map as proposed or as amended would be in substantial compliance with the land use plan, including whether the zoning regulation or map:

(i) accommodates the projected needed housing types identified in [section 10];

(ii) contains five or more specific strategies from [section 19] to encourage the development of housing within the jurisdiction;

(iii) reflects allowable uses and densities in areas that may be adequately served by public safety, emergency, utility, transportation, education, and any other local facilities or services identified by the local government in [section 11];

(iv) allows sufficient area for existing, new, or expanding commercial, industrial, and institutional enterprises the local government has identified in [section 12] for targeted economic growth in the jurisdiction;

(v) protects and maximizes the potential use of natural resources within the area, as identified in [section 13];

(vi) minimizes or avoids impacts to the natural environment within the area, as identified in [section 13]; and

(vii) avoids or minimizes dangers associated with natural hazards in the jurisdiction, as identified in [section 13]; and

(d) preliminarily determine whether the proposed zoning regulation, map, or amendment results in new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessment conducted for the land use plan.

(3) If the planning commission finds new or increased impacts from the proposed regulation, map, or amendment, as provided in subsection (2)(d), the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission and the public with the opportunity to comment on and consider all potential impacts resulting from adoption of the zoning regulation, map, or amendment.

(4) After meeting the requirements of subsections (2) and (3), the planning commission shall make a final recommendation to the governing body to approve, modify, or reject the proposed zoning regulation, map, or amendment.

(5) (a) The governing body shall consider each zoning regulation, map, or amendment that the planning commission recommends to the governing body.

(b) After providing public notice and participation in accordance with [section 6], the governing body may adopt, adopt with revisions the governing body considers appropriate, or reject the zoning regulation, map, or amendment as proposed by the planning commission.

(c) The governing body may not condition an amendment to a zoning regulation or map.

(d) The governing body may not adopt or amend a zoning regulation or map unless the governing body finds that:

(i) the regulation, map, or amendment is in substantial compliance with the land use plan; and

(ii) the impacts resulting from development in substantial compliance with the proposed zoning regulation, map, or amendment have been made available for public review and comment and have been fully considered by the governing body.

(6) After the zoning regulation, map, or amendment has been adopted by the governing body, there is a presumption that:

(a) all permitting in substantial compliance with the zoning regulation, map, or amendment is in substantial compliance with the land use plan; and

(b) the public has been provided a meaningful opportunity to participate.

Section 22. Effect on zoning regulations and map. (1) After the adoption of a zoning regulation, map, or amendment pursuant to [section 21], any application proposing development of a site is subject to the process set forth in this section.

(2) (a) When a proposed development lies entirely within an incorporated city, or is proposed for annexation into the city, the application must be submitted to and approved by the city.

(b) Except as provided in subsections (2)(a) or (2)(c), when a proposed development lies entirely in an unincorporated area, the application must be submitted to and approved by the county.

(c) If a proposed development lies within an area subject to increased growth pressures, higher development densities, or other urban development influences identified by either jurisdiction in [section 14], the jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

(d) If the proposed development lies partly within an incorporated city, the application and materials must be submitted to and approved by both the city and the county governing bodies.

(3) Zoning compliance permits and other ministerial permits may be issued by the planning administrator or the planning administrator's designee without any further review or analysis by the governing body, except as provided in [section 37].

(4) If a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations or map and all impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan, zoning regulation, map, or amendment thereto, the application must be approved, approved with conditions, or denied by the planning administrator and is not subject to any further public review or comment, except as provided in [section 37].

(5) (a) If a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations and map but may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan or zoning regulations, the planning administrator shall proceed as follows:

(b) request that the applicant collect any additional data and perform any additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the impacts identified in subsection (5)(a);

(c) collect any additional data or perform additional analysis the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the impacts identified in subsection (5)(a); and

(d) provide notice of a 15-business day written comment period during which the public has the reasonable opportunity to participate in the consideration of the impacts identified in subsection (5)(a).

(6) (a) Any additional analysis or public comment on a proposed development described in subsection (5) must be limited to only any new or significantly increased impacts potentially resulting from the proposed development, to the extent the impact was not previously identified or considered in the adoption or amendment of the land use plan or zoning regulations.

(b) The planning administrator shall approve, approve with conditions, or deny the application. The planning administrator's decision is final and no further action may be taken except as provided in [section 37].

(7) If an applicant proposes to develop a site in a manner or to an extent that the development is not in substantial compliance with the zoning regulations or map, the applicant shall propose an amendment to the regulations or map and follow the process provided for in [section 21].

Section 23. Zoning and annexation. (1) A municipality shall review and consider a proposed annexation in conjunction with the zoning regulations for the property to be annexed adopted pursuant to [section 18(1)(c)] following the procedures set forth in [section 22].

(2) The joint public process authorized in subsection (1) fulfills the notice and public hearing requirements for a proposed annexation required in Title 7, chapter 2, parts 42 through 47.

Section 24. Interim zoning ordinances. (1) A local government, to protect the public safety, health, and welfare and without following the procedures otherwise required prior to adopting a zoning regulation, may

adopt an interim zoning ordinance as an urgency measure to regulate or prohibit uses that may conflict with a zoning proposal that the governing body is considering or studying or intends to study within a reasonable time.

(2) Before adopting an interim zoning ordinance, the governing body shall first hold a public hearing upon notice reasonably designed to inform all affected parties. A notice must be published in a newspaper of general circulation at least 7 days before the public hearing.

(3) An interim zoning ordinance takes effect immediately on passage and approval after first reading

and may be in effect no longer than 1 year from the date of its adoption.

(4) A local government may not act under the authority provided for in this section until the local government has adopted a land use plan and zoning regulations pursuant to [sections 1 through 38].

Section 25. Authority to adopt local subdivision regulations -- limitations. (1) Within its respective jurisdiction, a local government shall regulate the creation of lots in substantial compliance with its adopted land use plan and zoning regulations by adopting subdivision regulations.

(b) The governing body of a county or city has the authority to adopt subdivision regulations in accordance with [sections 25 through 34] by an ordinance that substantially complies with 7-5-103 through 7-5-107.

(c) A municipality shall adopt subdivision regulations for those portions of the jurisdictional area outside the boundaries of the municipality that the governing body anticipates may be annexed into the municipality over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, subdivision regulations on property outside the municipal boundaries may not apply or be enforced until the areas are annexed or being annexed into the municipality.

(2) The subdivision regulations must provide a process for the application and consideration of subdivision exemptions, certificates of survey, preliminary plats, and final plats as necessary for the implementation of [sections 1 through 38].

(3) (a) A local governing body may not require, as a condition for approval of a subdivision under this [sections 25 through 34]:

(i) the payment of a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(ii) the dedication of real property for the purpose of providing housing for specified income levels or at specified sale prices.

(b) A dedication of real property prohibited in subsection (3)(a)(ii) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

(4) The local governing body may not change, in the subdivision regulations or in the process for subdividing, any timelines or procedural requirements for an application to subdivide other than provided for in [sections 25 through 34].

Section 26. Exemptions to subdivision review. (1) The following divisions of land, if made in substantial compliance with zoning regulations adopted pursuant to [sections 18 through 24], are not subject to the requirements of [sections 1 through 38]:

(a) subject to subsection (2), the creation of four or fewer new lots or parcels from an original lot or parcel:

(i) by order of a court of record in this state;

(ii) by operation of law; or

(iii) that, in the absence of agreement between the parties to a sale, could be created by court order in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), the creation of a lot to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing, if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture;

(c) the creation of an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) the creation of cemetery lots;

(e) the reservation of a life estate on a portion of a tract of record;

(f) the lease or rental of a portion of a tract of record for farming and agricultural purposes;

(g) the division of property over which the state does not have jurisdiction;

(h) the creation of rights-of-way or utility sites;

(i) the creation of condominiums, townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, when any applicable park dedication requirements as set forth in [sections 18 through 24] are complied with;

(j) the lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority;

(k) subject to subsection (4), a division of state-owned land, unless the division creates a second or subsequent residential parcel from a single tract for sale, rent, or lease after July 1, 1974;

(l) the creation of lots by deed, contract, lease, or other conveyance executed prior to July 1, 1974;

(m) the relocation of common boundary lines between or aggregations of adjoining properties that does not result in an increase in the number of lots;

(n) a single gift or sale in each county to each member of the landowner's immediate family; or

(o) subject to subsection (5), the creation of lots by deed, contract, lease, or other conveyance in which the landowner enters into a covenant with the governing body that runs with the land that provides that the divided land must be used exclusively for agricultural purposes.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) A transfer of divided land by the owner of the property at the time that the land was divided to any party other than those identified in subsection (1)(b) subjects the division of land to the requirements of [sections 1 through 38].

(4) Instruments of transfer of land that is acquired for state highways may refer by parcel and project number to state highway plans that have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of [sections 1 through 38]. If the parcels are not shown on highway plans of record, instruments of transfer of the parcels must be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The governing body, in its discretion, may revoke the covenant provided for in subsection (1)(o) without subdivision review if the original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant.

Section 27. Adoption and amendment of subdivision regulations. (1) (a) The governing body shall adopt or amend subdivision regulations only after consideration by and on the recommendation of the planning commission.

(b) An amendment to adopted subdivision regulations may be initiated:

(i) by majority vote of the governing body;

(ii) on petition of at least 15% of the electors of the local government jurisdiction to which the regulations apply, as registered at the last general election; or

(iii) by a property owner, as related to an application for any zoning, subdivision, or other land use permit or approval.

(2) Prior to making a recommendation to the governing body to adopt or amend subdivision regulations, the planning commission shall:

(a) provide public notice and participation in accordance with [section 6];

(b) accept, consider, and respond to public comment on the proposed subdivision regulation or amendment to a subdivision regulation. All public comment must be part of the administrative record transmitted to the governing body.

(c) make a preliminary determination as to whether the subdivision regulation or amendment to a subdivision regulation is in substantial compliance with the land use plan and zoning regulations, including whether the regulation or amendment:

(i) enables the development of projected needed housing types identified in the land use plan and zoning regulations;

(ii) reflects applicable strategies from the land use plan and zoning regulations to encourage the development of housing within the jurisdiction;

(iii) facilitates the adequate provision of public safety, emergency, utility, transportation, education, and any other local facilities or services for proposed development, as identified in the land use plan and zoning regulations;

(iv) reflects standards that provide for existing, new, or expanding commercial, industrial, and institutional enterprises identified in the land use plan and zoning regulations for economic growth;

(v) protects and maximizes the potential use of natural resources within the area, as identified in the land use plan and zoning regulations;

(vi) contains standards that minimize or avoid impacts to the natural environment within the area, as identified in the land use plan and zoning regulations; and

(vii) contains standards that avoid or minimize dangers associated with natural hazards in the jurisdiction, as identified in the land use plan and zoning regulations; and

(d) preliminarily determine whether the proposed subdivision regulation or amendment to a subdivision regulation results in new or increased potential impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessments conducted for the land use plan and zoning regulations.

(3) If the planning commission finds new or increased potential impacts from the proposed regulation or amendment to a regulation pursuant to subsection (2)(d), the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission and the public with the opportunity, pursuant to [section 6], to comment on and consider all potential impacts resulting from adoption of the subdivision regulation or amendment to a subdivision regulation.

(4) After meeting the requirements of subsection (2), the planning commission shall make a final recommendation to the governing body to approve, modify, or reject the proposed subdivision regulation or amendment to a subdivision regulation.

(5) (a) The governing body shall consider each subdivision regulation or amendment to a subdivision regulation that the planning commission recommends to the governing body.

(b) After providing public notice and participation in accordance with [section 6], the governing body may adopt, adopt with revisions that the governing body considers appropriate, or reject the subdivision regulation or amendment to a subdivision regulation as proposed by the planning commission.

(c) The governing body may not adopt or amend a subdivision regulation unless the governing body finds:

(i) the subdivision regulation or amendment to a subdivision regulation is in substantial compliance with the land use plan and zoning regulations; and

(ii) the impacts resulting from development in substantial compliance with the proposed subdivision regulation or amendment to a subdivision regulation have been made available for public review and comment, which have been fully considered by the governing body.

(6) After the subdivision regulation or amendment to a subdivision regulation has been adopted by the governing body, there is a presumption that:

(a) all subdivisions in substantial compliance with the adopted regulation or amendment are in substantial compliance with the land use plan and zoning regulations; and

(b) the public has been provided a meaningful opportunity to participate.

Section 28. Contents of local subdivision regulations. (1) The subdivision regulations adopted under [sections 25 through 34] are limited to the following requirements:

(a) the date the regulations initially become effective under [sections 1 through 38] and the effective dates and the ordinance numbers for all subsequent amendments;

(b) design standards for all subdivisions in the jurisdiction, which may be incorporated by reference or may be based on the information and analysis contained in the land use plan and zoning regulations, including:

(i) standards for grading and erosion control;

(ii) standards for the design and arrangement of lots, streets, and roads;

(iii) standards for the location and installation of public utilities, including water supply and sewage and solid waste disposal;

(iv) standards for the provision of other public improvements; and

(v) legal and physical access to all lots;

(c) when a subdivision creates parcels with lot sizes averaging less than 5 acres, a requirement that the subdivider:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the subject property, transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement that is administered through a single entity and that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(d) except as provided in subsection (2), a requirement that the subdivider establish ditch easements that:

(i) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open

ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(ii) unless otherwise provided for under a separate written agreement or filed easement, provide for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(iii) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(iv) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner;

(e) criteria that the planning administrator must use to determine whether a proposed method of disposition using the exemptions provided in [sections 1 through 38] is an attempt to evade the requirements of [sections 1 through 38];

(f) a list of the materials that must be included in order for the application to be determined complete;

(g) subject to subsection (4), identification of circumstances or conditions that may necessitate the denial of any or specific types of development, such as unmitigable natural hazards, insufficient water supply, inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds for the supply of the services;

(h) subject to subsection (5), a list of public utilities and agencies of local, state, and federal government that the local government must seek input from during review of an application and for what information or analysis; or

(i) subject to subsection (6), requirements for the dedication of land, cash-in-lieu thereof, or a combination of both for parks and recreation purposes, not to exceed 0.03 acres per dwelling unit.

(2) A land donation under this section may be inside or outside of the subdivision.

(3) The regulations may not require ditch easements if:

(a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land that the lots may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(b) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(4) (a) The regulations must prohibit development in circumstances or conditions identified in subsection (1)(g) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the subdivision regulations.

(b) Approved construction techniques or other mitigation measures described in subsection (4)(a) may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(5) If a proposed subdivision is situated within a rural school district, as described in 20-9-615, the local government shall provide a copy of the application and preliminary plat to the school district.

(6) (a) A park dedication may not be required for:

(i) land proposed for subdivision into parcels larger than 5 acres;

(ii) subdivision into parcels that are all nonresidential;

(iii) a subdivision in which parcels are not created, except when that subdivision provides multiple permanent spaces for recreational camping vehicles, mobile homes, or condominiums; or

(iv) a subdivision in which only one additional parcel is created.

(b) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (6)(a) to a school district to be used for school facilities or buildings.

Section 29. Local review procedure for divisions of land. (1) An applicant may request a preapplication submittal and response from the planning administrator prior to submitting a subdivision application. The preapplication review must take place no more than 30 business days from the date that the planning administrator receives a written request for a preapplication review from the subdivider.

(2) On receipt of an application for an exemption from subdivision review under [section 26] that contains all materials and information required by the governing body under subsection (5), the local government:

(a) shall approve or deny the application within 20 business days;

(b) may not impose conditions on the approval of an exemption from subdivision review except for conditions necessary to ensure compliance with the survey requirements of [section 33(1)]; and

(c) may require the certificate of survey to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the certificate of survey. A professional land surveyor may not act as an examining land surveyor in regard to a certificate of survey in which the surveyor has a financial or personal interest.

(3) (a) When a proposed subdivision lies entirely within an incorporated city or is proposed for annexation into the city, the application and preliminary plat must be submitted to and approved by the city.

(b) Except as provided in subsection (3)(c), when a proposed subdivision lies entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the county.

(c) If the proposed subdivision lies within an area subject to increased growth pressures, higher development densities, or other urban development influences identified by either jurisdiction in [section 14], the jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

(d) If the proposed subdivision lies partly within an incorporated city, the application and preliminary plat must be submitted to and approved by both the city and the county governing bodies.

(4) A subdivision application is considered received on the date the application is delivered to the reviewing agent or agency if accompanied by the review fee.

(5) (a) The planning administrator has 20 business days to determine whether the application contains all information and materials necessary to complete the review of the application as set forth in the local subdivision regulations.

(b) The planning administrator may review subsequent submissions of the application only for information found to be deficient during the original review of the application under subsection (5)(a).

(c) A determination that an application contains sufficient information for review as provided in subsection (5)(a) does not ensure approval or conditional approval of the proposed subdivision and does not limit the ability of the planning administrator to request additional information during the review process.

(6) A subdivider may propose a phasing plan for approval with a preliminary plat. The phasing plan must include a phasing plan and map that demonstrates what lots will be included with each phase, what public facilities will be completed with each phase, and the timeline for the proposed phases.

(7) (a) If an application proposes a subdivision of a site that, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning and subdivision regulations and all impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan, zoning regulations, and subdivision regulations, or any amendment thereto, the planning administrator shall issue a written decision to approve, approve with conditions, or deny the preliminary plat.

(b) The application is not subject to any further public review or comment, except as provided in [section 37].

(c) The decision by the planning administrator must be made no later than 15 business days from the date the application is considered complete.

(8) (a) If an application proposes subdivision of a site that, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning and subdivision regulations but may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning regulations, or subdivision regulations, or any amendments thereto, the planning administrator shall proceed as follows:

(i) request the applicant to collect additional data and perform additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the impacts identified in this subsection (8)(a);

(ii) collect additional data or perform additional analysis that the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the impacts identified in this subsection (8)(a); and

(iii) provide notice of a written comment period of 15 business days during which the public must have a reasonable opportunity to participate in the consideration of the impacts identified in this subsection (8)(a).

(b) Any additional analysis or public comment on the proposed development is limited to only new or significantly increased potential impacts resulting from the proposed development to the extent that the impact was not previously identified in the consideration and adoption of the land use plan, zoning regulations, subdivision regulations, or any amendments thereto.

(9) Within 30 business days of the end of the written comment period provided in subsection (8)(a)(iii), the planning administrator shall issue a written decision to approve, conditionally approve, or deny a proposed subdivision application.

(10) The basis of the decision to approve, conditionally approve, or deny a proposed preliminary plat is based on the administrative record as a whole and a finding that the proposed subdivision:

(a) meets the requirements and standards of [sections 1 through 38];

(b) meets the survey requirements provided in [section 33(1)];

(c) provides the necessary easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) provides the necessary legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(11) (a) The written decision must identify each finding required in subsection (10) that supports the decision to approve, conditionally approve, or deny a proposed preliminary plat, including any conditions placed on the approval that must be satisfied before a final plat may be approved.

(b) The written decision must identify all facts that support the basis for each finding and each condition and identify the regulations and statutes used in reaching each finding and each condition.

(c) When requiring mitigation as a condition of approval, a local government may not unreasonably restrict a landowner's ability to develop land. However, in some instances, the local government may determine that the impacts of a proposed development are unmitigable and preclude approval of the subdivision.

(12) The written decision to approve, conditionally approve, or deny a proposed subdivision must:

(a) be provided to the applicant;

(b) be made available to the public;

(c) include information regarding the appeal process; and

(d) state the timeframe the approval is in effect.

(13) The planning administrator's decision is final, and no further action may be taken except as provided in [section 37].

(14) Any changes to an approved preliminary plat that increases the number of lots or redesigns or rearranges six or more lots must undergo consideration and approval of an amended plat following the requirements of this section.

Section 30. Effect of preliminary plat approval. (1) (a) An approved or conditionally approved preliminary plat must be in effect for not more than 5 calendar years and not less than 1 calendar year.

(b) At the end of the period, the planning administrator may, at the request of the subdivider, extend the approval once by written agreement.

(c) On receipt of a request for an extension, the planning administrator shall determine whether the preliminary plat remains in substantial compliance with the zoning and subdivision regulations. If the preliminary plat is no longer in substantial compliance with the zoning or subdivision regulations, the extension may not be granted.

(d) After a preliminary plat is approved, the local government may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period.

(e) Any subsequent requests by the subdivider for extension of the approval must be reviewed and approved by the governing body.

(2) An approved or conditionally approved phased preliminary plat must be in effect for 20 calendar years.

Section 31. Local review procedure for final plats. (1) The following must be submitted with a final plat application:

(a) information demonstrating the final plat conforms to the written decision and all conditions of approval set forth on the preliminary plat;

(b) a plat that meets the survey requirements provided in [section 33(1)]; and

(c) confirmation the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) The final plat may be required to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the final plat. A professional land surveyor may not act as an examining land surveyor in regard to a plat in which the surveyor has a financial or personal interest.

(3) A final plat application is considered received on the date the application is delivered to the governing body or the agent or agency designated by the governing body if accompanied by the review fee.

(4) (a) Within 10 business days of receipt of a final plat, the planning administrator shall determine whether the final plat contains the information required under subsection (1) and shall notify the subdivider in writing.

(b) If the planning administrator determines that the final plat does not contain the information required under subsection (1), the planning administrator shall identify the final plat's defects in the notification.

(c) The planning administrator may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection (4)(a).

(d) A determination that the application for a final plat contains sufficient information for review as provided in subsection (4)(a) does not ensure approval of the final plat and does not limit the ability of the planning administrator to request additional information during the review process.

(5) Once a determination is made under subsection (4) that the final plat contains the information required under subsection (1), the governing body shall review and approve or deny the final plat within 20 business days.

(6) The subdivider or the subdivider's agent and the governing body or its reviewing agent or agency may mutually agree to extend the review periods provided for in this section.

(7) (a) For a period of 5 years after approval of a phased preliminary plat, the subdivider may apply for final plat of any one or more phases following the process set forth in subsections (1) through (6).

(b) After 5 years have elapsed since approval of a phased preliminary plat, the planning administrator shall review each remaining phase to determine if a phase may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning or subdivision regulations, or review and approval of the phased preliminary plat. If the planning administrator identifies any new or significantly increased potential impacts not previously identified and considered, the planning administrator shall proceed as set forth in [section 29(8)].

(c) If necessary to mitigate impacts identified in subsection (7)(b), the planning administrator may impose conditions on any phase before final plat approval is sought.

Section 32. Filing and recordation of plats and certificates of survey. (1) (a) Except as provided in subsection (1)(b), every final plat or certificate of survey must be filed for record with the county clerk and recorder before title to the land may be sold or transferred in any manner. The clerk and recorder of the county may not accept any final plat or certificate of survey for record that has not been approved in accordance with [sections 25 through 34]

unless the final plat or certificate of survey is located in an area over which the state does not have jurisdiction.

(b) After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following contract conditions are imposed and met:

(i) the purchasers of lots in the proposed subdivision make payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(ii) the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(iii) if the final plat of the proposed subdivision is not filed with the county clerk and recorder within the approval period of the preliminary plat, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;

(iv) the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(v) the following language is conspicuously set out in each contract: "The real property that is the subject of this contract has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property may not be transferred in any manner".

(2) (a) Subject to subsection (2)(b), no division of land may be made 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 (2)(b) as a partial payment of the total tax that is due.

(3) (a) The county clerk and recorder shall maintain an index of all recorded and filed subdivision plats and certificates of survey.

(b) The index must list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and must list the recording or filing numbers of all plats or certificates of survey depicting lands lying within each quarter section. Each quarter section list must be definitive to the exclusion of all other quarter sections. The index must also list the names of all subdivision plats in alphabetical order and the place where filed.

(4) The recording of any plat made in compliance with the provisions of [sections 1 through 38] must serve to establish the identity of all lands shown on and being part of the plat. When lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof must be regarded as incorporated into the instrument of conveyance and must be received in evidence in all courts of this state.

(5) (a) Any plat prepared and recorded as provided in [sections 25 through 34] may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon

vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration:

(i) the previous platting;

(ii) the manner in which the right-of-way was originally dedicated, granted, or conveyed;

(iii) the reasons stated in the petition requesting the vacation;

(iv) the parties requesting the vacation; and

(v) any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(b) Notwithstanding the provisions of subsection (5)(a), when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

Section 33. Survey requirements. (1) Divisions of land under [sections 1 through 38] must follow the uniform standards governing monumentation, certificates of survey, and subdivision plats prescribed and adopted by the board of professional engineers and professional land surveyors.

(2) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Title 70, chapter 22, part 1. Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with [sections 25 through 34] and regulations adopted pursuant to [sections 25 through 34].

(3) All divisions of land for sale other than a subdivision created after July 1, 1974, divided into parcels that cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of subsection (8).

(4) Except as provided in 70-22-105, within 180 days of the completion of a survey, the professional land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in the map;

(c) discloses evidence to suggest alternate locations of lines or points; or

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.

(5) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of [sections 1 through 38].

(6) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

(7) (a) A registered land surveyor may administer and certify oaths when:

(i) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(ii) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated; or

(iii) the importance of the survey makes it desirable to administer an oath to the surveyor's assistants for the faithful performance of their duty.

(b) A record of oaths must be preserved as part of the field notes of the survey and noted on the certificate of survey filed under subsection (4).

(8) (a) (i) A surveyor who completes a survey identified in subsection (8)(b) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than one section shall note on the survey the acreage of the farm unit or created parcel in each section.

(ii) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(b) The requirements of subsection (8)(a) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(i) traversed by a canal or ditch owned by an irrigation district; or

(ii) included in an irrigation district.

Section 34. Public improvements and extension of capital facilities. (1) Except as provided in subsections (1)(a) and (1)(c), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(a) (i) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall, at the subdivider's option, allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements. Failure of the local government to require the renewal of a bond does not waive the subdivider's responsibility to complete the required improvements prior to the approval of the final plat.

(ii) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a)(i), the governing body may enter into a subdivision improvements agreement with the subdivider that provides for an incremental payment, guarantee plan, or other method of completing the necessary improvements to serve the development as set forth in the preliminary plat approval.

(b) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (1)(a) is not an act of a legislative body for the purposes of 2-9-111.

(c) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding, other reasonable security, or entering into a subdivision improvements agreement for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

(2) (a) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(b) All fees, costs, or other money paid by a subdivider under this subsection (2) must be expended on the capital facilities for which the payments were required.

Section 35. Variances. (1) All land use regulations must include a process for the submission and review of variances.

(2) The application for a variance must be for relief from land or building form design standards or subdivision design and improvement standards.

(3) Variance applications must be considered and approved or approved with conditions before application or in conjunction with application for a zoning permit or subdivision approval.

(4) The granting of a variance must meet all of the following criteria:

(a) the variance is not detrimental to public health, safety or general welfare;

(b) the variance is due to conditions peculiar to the property, such as physical surroundings, shape, or topographical conditions;

(c) strict application of the regulations to the property results in an unnecessary hardship to the owner as compared to others subject to the same regulations and that is not self-imposed;

(d) the variance may not cause a substantial increase in public costs; and

(e) the variance may not place the property in nonconformance with any other regulations.

(5) Additional criteria may apply if the variance is associated with a floodplain or floodway pursuant to the requirements of Title 76, chapter 5.

(6) Variance requests must be reviewed and determined by the planning administrator. The planning administrator's decision is final and no further action may be taken except as provided in [section 37].

Section 36. Fees. The governing body may establish reasonable fees to be paid by an applicant for a zoning permit, subdivision application, appeals, or any other review performed by the local government pursuant to [sections 1 through 38] to defray the expense of performing the review.

Section 37. Appeals. (1) Appeals of any final decisions made pursuant to [sections 1 through 38] must be made in accordance with this section.

(2) For a challenge to the adoption of or amendment to a land use plan, zoning regulation, zoning map, or subdivision regulation, a petition setting forth the basis for the challenge must be presented to the district court within 30 days of the date of the resolution or ordinance adopted by the governing body.

(3) (a) Any final administrative land use decision, including but not limited to approval or denial of a zoning permit, preliminary plat or final plat, imposition of a condition on a zoning permit or plat, approval or denial of a variance from a zoning or subdivision regulation, or interpretation of land use regulations or map may be appealed by the applicant or any aggrieved person to the planning commission.

(b) An appeal under subsection (3)(a) must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

(c) The planning commission shall hear the appeal de novo. The planning commission is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in error.

(e) A decision of the planning commission on appeal takes effect on the date when the planning commission issues a written decision.

(4) (a) Any final land use decision by the planning commission may be appealed by the applicant, planning administrator, or any aggrieved person to the governing body.

(b) An appeal under subsection (4)(a) must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

(c) The governing body shall hear the appeal de novo. The governing body is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in error.

(d) A decision of the governing body on appeal takes effect on the date when the governing body issues a written decision.

(5) (a) No person may challenge in district court a land use decision until that person has exhausted the person's administrative appeal process as provided in this section.

(b) Any final land use decision of the governing body may be challenged by presenting a petition setting forth the grounds for review of a final land use decision with the district court within 30 calendar days after the written decision is issued.

(c) A challenge in district court to a final land use decision of the governing body is limited to the issues raised by the challenger on administrative appeal.

(6) Every final land use decision made pursuant to this section must be based on the administrative record as a whole and must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(7) Nothing in [sections 1 through 38] is subject to any provision of Title 2, chapter 4.

Section 38. Enforcement and penalties. (1) A local government may, by ordinance, establish civil penalties for violations of any of the provisions of [sections 1 through 38] or of any ordinances adopted under the authority of [sections 1 through 38].

(2) Prior to seeking civil penalties against a property owner, a local government shall provide:

(a) written notice, by mail or hand delivery, of each ordinance violation to the address of the owner of record on file in the office of the county recorder;

(b) a reasonable opportunity to cure a noticed violation; and

(c) a schedule of the civil penalties that may be imposed on the owner for failure to cure the violation before expiration of a time certain.

(3) A local government may, in addition to other remedies provided by law, seek:

(a) an injunction, mandamus, abatement, or any other appropriate action provided for in law;

(b) proceedings to prevent, enjoin, abate, or remove an unlawful building, use, occupancy, or act; or

(c) criminal prosecution for violation of any of the provisions of [sections 1 through 38] or of any ordinances adopted under the authority of [sections 1 through 38] as a misdemeanor punishable by a fine not to exceed $500 per day for each violation.

(4) In any enforcement action taken under this section or remedy sought thereunder, the parties shall pay their own costs and attorney fees.

Section 39. Repealer. The following sections of the Montana Code Annotated are repealed:

7-21-1001. Legislative findings and purpose.
7-21-1002. Definitions.
7-21-1003. Local government regulations -- restrictions.

Section 40. Codification instruction. [Sections 1 through 38] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 38].

Section 41. Effective date. [This act] is effective on passage and approval.

Section 42. Applicability. [This act] applies to local governments that currently meet the population thresholds in [section 5].

Approved May 17, 2023

CHAPTER NO. 501

[SB 407]

AN ACT REVISING MUNICIPAL ZONING LAWS; PROHIBITING A MUNICIPALITY FROM USING AN EXTERNAL BOARD WHEN REVIEWING PERMITS OR VARIANCES; AND AMENDING SECTION 76-2-302, MCA.

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

Section 1. Section 76-2-302, MCA, is amended to read:

"**76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2. *Local design review standards imposed by a local government must be clear, objective, and necessary to protect public health or safety or to comply with federal law.*

(6) Zoning regulations may not include a requirement to:

(a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.

(7) A dedication of real property as prohibited in subsection (6)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

(8) (a) Except as provided in subsection (8)(b), when reviewing an application for a zoning permit or variance from local design review standards, the determination of compliance with local design review standards as provided in subsection (5) must be conducted by employees of the municipality, and the municipality may not require review by an external board.

(b) Subsection (8)(a) does not apply to historic preservation boards reviewing an application for a permit or variance to structures or districts that the local government has designated as historic or that are listed on the national register of historic places as defined in the National Historic Preservation Act of 1966 as it read on [the effective date of this act]."

Approved May 17, 2023

CHAPTER NO. 502

[SB 528]

AN ACT REVISING MUNICIPAL ZONING LAWS TO ALLOW FOR ACCESSORY DWELLING UNITS; REQUIRING MUNICIPALITIES TO ADOPT CERTAIN REGULATIONS IN RELATION TO ACCESSORY DWELLING UNITS; PROHIBITING CERTAIN REGULATIONS IN RELATION TO ACCESSORY DWELLING UNITS; ALLOWING A MUNICIPALITY TO CHARGE A FEE TO REVIEW APPLICATIONS TO CREATE ACCESSORY DWELLING UNITS; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Accessory dwelling units -- regulations -- restrictions. (1) (a) A municipality shall adopt regulations under this chapter that allow a minimum of one accessory dwelling unit by right on a lot or parcel that contains a single-family dwelling.

(b) An accessory dwelling unit may be attached, detached, or internal to the single-family dwelling on a lot or parcel.

(c) If the accessory dwelling unit is detached from or attached to the single-family dwelling, it may not be more than 75% of the gross floor area of the single-family dwelling or 1,000 square feet, whichever is less.

(2) A municipality may not:

(a) require that a lot or parcel have additional parking to accommodate an accessory dwelling unit or require fees in lieu of additional parking;

(b) require that an accessory dwelling unit match the exterior design, roof pitch, or finishing materials of the single-family dwelling;

(c) require that the single-family dwelling or the accessory dwelling unit be occupied by the owner;

(d) require a familial, marital, or employment relationship between the occupants of the single-family dwelling and the occupants of the accessory dwelling unit;

(e) assess impact fees on the construction of an accessory dwelling unit;

(f) require improvements to public streets as a condition of permitting an accessory dwelling unit, except as necessary to reconstruct or repair a public

street that is disturbed as a result of the construction of the accessory dwelling unit;

(g) set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot;

(h) impose more onerous development standards on an accessory dwelling unit beyond those set forth in this section; or

(i) require a restrictive covenant concerning an accessory dwelling unit on a parcel zoned for residential use by a single-family dwelling. This subsection (2)(i) may not be construed to prohibit restrictive covenants concerning accessory dwelling units entered into between private parties, but the municipality may not condition a permit, license, or use of an accessory dwelling unit on the adoption or implementation of a restrictive covenant entered into between private parties.

(3) Nothing in this section prohibits a municipality from regulating short-term rentals as defined in 15-68-101.

(4) A municipality may require a fee for reviewing applications to create accessory dwelling units. The one-time application fee may be up to $250 for each accessory dwelling unit. Nothing in this section prohibits a municipality from requiring its usual building fees in addition to the application fee.

(5) A municipality that has not adopted or amended regulations pursuant to this section by January 1, 2024, shall review and permit accessory dwelling units in accordance with the requirements of this section until regulations are adopted or amended. Regulations in effect on or after January 1, 2024, that apply to accessory dwelling units and do not comply with this section are void.

(6) The provisions of this section do not supersede applicable building codes, fire codes, or public health and safety regulations adopted pursuant to Title 50, chapter 2.

(7) A municipality may require an accessory dwelling unit to have a will-serve letter from both a municipal water system and a municipal sewer system.

(8) Nothing in this section prohibits a municipality from adopting regulations that are more permissive than the accessory dwelling unit provisions provided in this section.

(9) For the purposes of this section:

(a) "accessory dwelling unit" means a self-contained living unit on the same parcel as a single-family dwelling of greater square footage that includes its own cooking, sleeping, and sanitation facilities and complies with or is otherwise exempt from any applicable building code, fire code, and public health and safety regulations adopted pursuant to Title 50, chapter 2.

(b) "by right" means the ability to be approved without requiring:

(i) a public hearing;

(ii) a variance, conditional use permit, special permit, or special exception; or

(iii) other discretionary zoning action other than a determination that a site plan conforms with applicable zoning regulations;

(c) "gross floor area" means the interior habitable area of a single-family dwelling or an accessory dwelling unit;

(d) "municipality" means an incorporated city, town, or consolidated city-county that exercises zoning powers under this part; and

(e) "single-family dwelling" means a building with one or more rooms designed for residential living purposes by one household that is detached from any other dwelling unit.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 2, part 3, and the provisions of Title 76, chapter 2, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective January 1, 2024.

Approved May 17, 2023

CHAPTER NO. 503

[SB 419]

AN ACT BANNING TIKTOK IN MONTANA; PROHIBITING A MOBILE APPLICATION STORE FROM OFFERING THE TIKTOK APPLICATION TO MONTANA USERS; PROVIDING FOR PENALTIES; PROVIDING FOR ENFORCEMENT AUTHORITY; PROVIDING DEFINITIONS; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the People's Republic of China is an adversary of the United States and Montana and has an interest in gathering information about Montanans, Montana companies, and the intellectual property of users to engage in corporate and international espionage; and

WHEREAS, TikTok is a wholly owned subsidiary of ByteDance, a Chinese corporation; and

WHEREAS, the People's Republic of China exercises control and oversight over ByteDance, like other Chinese corporations, and can direct the company to share user information, including real-time physical locations of users; and

WHEREAS, TikTok gathers significant information from its users, accessing data against their will to share with the People's Republic of China; and

WHEREAS, TikTok fails to remove, and may even promote, dangerous content that directs minors to engage in dangerous activities, including but not limited to throwing objects at moving automobiles, taking excessive amounts of medication, lighting a mirror on fire and then attempting to extinguish it using only one's body parts, inducing unconsciousness through oxygen deprivation, cooking chicken in NyQuil, pouring hot wax on a user's face, attempting to break an unsuspecting passerby's skull by tripping him or her into landing face first into a hard surface, placing metal objects in electrical outlets, swerving cars at high rates of speed, smearing human feces on toddlers, licking doorknobs and toilet seats to place oneself at risk of contracting coronavirus, attempting to climb stacks of milkcrates, shooting passersby with air rifles, loosening lug nuts on vehicles, and stealing utilities from public places; and

WHEREAS, TikTok's stealing of information and data from users and its ability to share that data with the Chinese Communist Party unacceptably infringes on Montana's right to privacy; and

WHEREAS, TikTok's continued operation in Montana serves as a valuable tool to the People's Republic of China to conduct corporate and international espionage in Montana and may allow the People's Republic of China to track the real-time locations of public officials, journalists, and other individuals adverse to the Chinese Communist Party's interests; and

WHEREAS, TikTok's allowance and promotion of dangerous challenges threatens the health and safety of Montanans.

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

Section 1. Prohibition -- penalty -- enforcement -- definitions. (1) Tiktok may not operate within the territorial jurisdiction of Montana. An

entity violates this prohibition when any of the following occurs within the territorial jurisdiction of Montana:

(a) the operation of tiktok by the company or users; or

(b) the option to download the tiktok mobile application by a mobile application store.

(2) An entity that violates a provision of this section is liable in the amount of $10,000 for each discrete violation and is liable for an additional $10,000 each day thereafter that the violation continues.

(3) It is an affirmative defense to this section if the violating entity could not have reasonably known that the violation occurred within the territorial jurisdiction of Montana.

(4) Penalties under this section do not apply to law enforcement activities, national security interests and activities, security research activities, or essential government uses permitted by the governor on the information technology system of the state.

(5) Penalties in this section do not apply to users of tiktok.

(6) The department of justice shall enforce the provisions of this section.

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

(a) "Discrete violation" means each time that a user accesses tiktok, is offered the ability to access tiktok, or is offered the ability to download tiktok.

(b) "Entity" means a mobile application store or tiktok.

(c) "Mobile application" means a type of software program designed to run on a mobile device.

(d) "Territorial jurisdiction" means all places subject to the criminal jurisdiction of Montana.

(e) "Tiktok" means the social networking service owned by the Chinese company bytedance limited or any successors.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, applies to [section 1].

Section 3. Severability. Each part of [this act] is severable. If any part of [this act] is invalid, illegal, or unenforceable, all valid parts remain in effect. If a part of [this act] is invalid in one or more of its applications, only those applications may be void and the remaining valid applications remain in effect as severable from the invalid applications and parts.

Section 4. Contingent voidness. [This act] is void if tiktok is acquired by or sold to a company that is not incorporated in any other country designated as a foreign adversary in 15 C.F.R. 7.4 at the time tiktok is sold or acquired.

Section 5. Effective date. [This act] is effective January 1, 2024.

Approved May 17, 2023

CHAPTER NO. 504

[HB 491]

AN ACT REVISING HIGHWAY PATROL OFFICER LAWS; CREATING A RECOGNITION OF MERITORIOUS SERVICE ON RETIREMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Recognition of meritorious service on retirement. (1) The highway patrol chief shall award to a highway patrol officer, on retirement, that highway patrol officer's badge, duty weapon, and handcuffs,

providing that a committee of three of the highway patrol officer's peers certifies to the highway patrol chief that the retiring highway patrol officer has:

(a) served meritoriously for a minimum of 20 years and must be so honored; or

(b) taken medical retirement resulting from an in-the-line-of-duty injury sustained while providing meritorious service.

(2) The highway patrol chief shall award to a surviving spouse or dependent of a highway patrol officer who died in the line of duty that highway patrol officer's badge, duty weapon, and handcuffs.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 1, part 6, and the provisions of Title 44, chapter 1, part 6, apply to [section 1].

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

Approved May 18, 2023

CHAPTER NO. 505

[HB 490]

AN ACT REVISING LAWS RELATED TO INDEPENDENT CONTRACTOR TAX EVASION AND FRAUD; CLARIFYING BUSINESS PRACTICES FOR CONSTRUCTION CONTRACTORS WHO HIRE INDEPENDENT CONTRACTORS; REVISING INDEPENDENT CONTRACTOR VIOLATION PENALTIES; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ORDER AN UNINSURED EMPLOYER TO CEASE OPERATIONS; AMENDING SECTIONS 39-9-301, 39-71-419, AND 39-71-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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) Use of a falsified registration number in connection with a solicitation or identification as a construction contractor or a home inspector is prohibited.

(3) 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.

(4) A construction contractor may not:

(a) hire a person as an independent contractor who does not have an independent contractor exemption certificate if required by 39-71-417;

(b) hire a person as an independent contractor if the department has suspended, revoked, or denied the person's independent contractor's exemption certificate;

(c) hire an independent contractor to work in a trade, business, occupation, or profession not listed on the independent contractor's registration;

(d) allow an independent contractor to perform work not in the trade, business, occupation, or profession listed on the independent contractor exemption certificate; or

(e) classify an employee as an independent contractor if the person does not have an independent contractor exemption certificate required by 39-71-417.

~~(4)~~*(5)* (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 2. Section 39-71-419, MCA, is amended to read:

"**39-71-419. Independent contractor violations -- penalty.** (1) A person may not:

(a) perform work as an independent contractor without first:

(i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a); or

(ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;

(b) perform work as an independent contractor when the department has ~~revoked~~ *suspended, revoked,* or denied the independent contractor's exemption certificate;

(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;

(d) alter or falsify an independent contractor exemption certificate; or

(e) misrepresent the person's status as an independent contractor. A person who falsely claimed, either in writing or through credible evidence, to have an independent contractor certification may not be considered to be an employee solely based on not actually having an independent contractor exemption certificate. The burden of proof that an independent contractor is certified rests with the independent contractor and not the hiring entity.

(2) An employer may not:

(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or

(b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-417(4).

(3) *(a)* In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to ~~$1,000~~ *$5,000* for each violation *as follows:*

(i) up to $1,000 for the first violation, of which up to $1,000 may be waived if the person or employer completes a department-directed education program;

(ii) up to $2,500 for the second violation;

(iii) up to $5,000 for the third violation;

(iv) $5,000 for the fourth and each subsequent violation. In addition to the fine, the department shall suspend or revoke the person's independent contractor exemption certificate and report the person to the workers' compensation fraud investigation and prosecution office provided for in 2-15-2015.

(b) The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.

(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days

of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution."

Section 3. Section 39-71-507, MCA, is amended to read:

"**39-71-507. Department to order uninsured employer to cease operations -- noncompliance with order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured employer, it shall order the employer to cease operations until the employer has elected to be bound by a compensation plan.

(2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it ~~may~~ *shall* order the person, business, or other entity functioning as a prime contractor to cause all operations performed by the uninsured employer to cease at worksites controlled by the prime contractor until the uninsured employer has elected to be bound by a compensation plan. If after 3 business days following the order by the department the person, business, or other entity functioning as a prime contractor has not complied with the order, the department may order the prime contractor to cease all operations at the affected worksites.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than $1,000 per day for each day of violation.

(5) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(6) The remedies provided in 39-71-506 and subsections (3) through (5) of this section are not mutually exclusive and may be pursued concurrently."

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

Approved May 18, 2023

CHAPTER NO. 506

[HB 500]

AN ACT ELIMINATING YOUTH COURT FEES, COSTS, CERTAIN FINES, AND CERTAIN FINANCIAL OBLIGATIONS; CREATING REPORTING REQUIREMENTS TO THE CRIMINAL JUSTICE OVERSIGHT COUNCIL; AMENDING SECTIONS 40-4-204, 40-5-303, 40-5-601, 40-5-701, 41-5-103, 41-5-132, 41-5-1304, 41-5-1412, 41-5-1501, 41-5-1503, 41-5-1511, 41-5-1512, 41-5-1513, AND 41-5-1703, MCA; AND REPEALING SECTIONS 41-5-112 AND 41-5-1525, MCA.

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

Section 1. Certain costs, obligations, and fees prohibited -- report. (1) (a) A court, agency, assessment officer, or juvenile probation officer may not order a youth, the youth's parents, or the youth's guardian to pay:

(i) a contribution, including but not limited to a contribution for any part of the costs for adjudication, disposition, attorney fees for costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, or necessary medical, dental, or health treatment; or

(ii) fines, except in the cases described in 41-5-203(2).

(b) A city, town, or county may not impose a legal financial obligation, fee, fine, or cost associated with a juvenile offense unless there is express statutory authority for the legal financial obligation, fee, fine, or cost.

(2) Nothing in this section may be construed to prohibit billing public and private insurance or coverage to provide services under the Montana Youth Court Act.

(3) (a) On [the effective date of this act], all outstanding fees or costs owed by a youth, the youth's parents, or the youth's guardian are void and uncollectable, and any order requiring the payment of fees or costs is unenforceable.

(b) Within 6 months of [the effective date of this act], the office of court administrator shall report to the criminal justice oversight council established in 53-1-216 the number of orders vacated or partially vacated in each judicial district pursuant to this section. The report must include the amount of the balances vacated in each judicial district.

Section 2. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the parents;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the age of the child;

(f) the cost of day care for the child;

(g) any parenting plan that is ordered or decided upon; and

(h) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines

is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of Title 40, chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income-withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(d) If an obligor is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone number, [social security number,] and driver's license number;

(ii) the name, address, and telephone number of the party's employer; and

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the

names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act, to the parties, and to each party's counsel of record. The information provided under subsection (6)(a) may be included on the case registry and vital statistics reporting form filed with the court pursuant to 40-5-908(1).

(c) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) A judgment, decree, or order establishing a child support obligation under this part may be modified or adjusted as provided in 40-4-208 or, if the department of public health and human services is providing services under Title IV-D of the Social Security Act, may be modified or adjusted by the department as provided for in 40-5-271 through 40-5-273, 40-5-277, and 40-5-278.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further court order:

(i) to the person with whom the child resides by legal order;

(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;

(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or

(iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

(c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-438~~, 41-5-1304, or 41-5-1512~~, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613.

(10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is

issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 3. Section 40-5-303, MCA, is amended to read:

"**40-5-303. Petition for income deduction -- who may initiate.** (1) If an obligor is exempted from immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the obligor's income may be withheld for the payment of child support if the obligor becomes delinquent in the payment of support, a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of the date of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by 40-5-305.

(2) Income withholding for the payment of child support may be initiated by:

(a) the person named as the recipient of the child support payments in the child support order;

(b) the child or the guardian of the child named in the child support order; *or*

(c) the department of public health and human services~~; or~~

~~(d) the state of Montana, including the department of corrections and respective county attorneys, for the purpose of enforcing contribution orders under 41-5-1525. These contribution orders are considered to be child support orders for purposes of enforcement under this chapter~~.

(3) (a) At the request of an initiating party who has determined that an obligor is delinquent, the district court shall issue an order for income deductions for immediate service upon the obligor's payor or payors. The order is limited to current support unless modified to include arrears as provided in 40-5-308.

(b) At the same time an income deduction order is issued, the requesting party shall notify the obligor as provided in 40-5-305 that income deductions have been initiated.

(4) Deductions under this section for current support may be terminated only if:

(a) the district court determines after a hearing that the obligor was not delinquent when the deduction order was issued;

(b) the obligation to pay support has terminated and all delinquencies are paid in full; or

(c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.

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

(a) "Employer" includes a payor.

(b) (i) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement program, interest and earnings, and wages.

(ii) Income does not include:

(A) an amount, other than creditor claims, required by law to be withheld, including federal, state, and local taxes and social security; or

(B) an amount exempted from judgment, execution, or attachment by federal or state law.

(c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of any one of them, subject to the jurisdiction of the courts of this state under Rule 4(b) of the Montana Rules of Civil Procedure."

Section 4. Section 40-5-601, MCA, is amended to read:

"**40-5-601. Failure to pay support -- civil contempt.** (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day-care expenses; *and* any other payments due as support under a court or administrative order~~; and contributions ordered pursuant to 41-5-1525~~. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

(a) that issued the support order;

(b) of the judicial district in which the obligated person resides; or

(c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

(a) there is a support order issued by a court or administrative agency of this or another state, an Indian tribe, or a country with jurisdiction to enter the order;

(b) the obligated person had actual or constructive knowledge of the order; and

(c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

(a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) has a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a $500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order."

Section 5. Section 40-5-701, MCA, is amended to read:

"**40-5-701. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for IV-D services under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Conservation activity" means an activity for which a wildlife conservation license is issued by the department of fish, wildlife, and parks pursuant to 87-2-201.

(3) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(4) "Department" means the department of public health and human services.

(5) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, profession, conservation activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state or an Indian tribe that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

(12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

(a) support to a child under the laws of this or any other state or under a support order;

(b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent; *or*

(c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support~~; or~~

~~(d) contributions ordered pursuant to 41-5-1525~~.

(13) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(14) (a) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(iv) an administrative agency of another state or an Indian tribe with a hearing function and process similar to those of the department.

(b) If an action for child support is commenced under this part and the context so requires, support order also includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

(16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by a court relating to the appearance of a party in a paternity or child support proceeding.

(17) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for services from an agency of another state or an Indian tribe under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."

Section 6. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Conditional release" means the release of a youth from a correctional facility subject to the terms and conditions of the conditional release agreement provided for in 52-5-126.

(6) (a) "Correctional facility" means a public secure residential facility or a private secure residential facility under contract with the department and operated to provide for the custody, treatment, training, and rehabilitation of:

(i) formally adjudicated delinquent youth;

(ii) convicted adult offenders or criminally convicted youth; or

(iii) a combination of the populations described in subsections (6)(a)(i) and (6)(a)(ii) under conditions set by the department in rule.

(b) The term does not include a state prison as defined in 53-30-101.

(7) "Cost containment pool" means an account from which funds are allocated by the office of court administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-home placements, programs, and services or to the department for costs incurred under 41-5-1504.

(8) "Cost containment review panel" means the panel established in 41-5-131.

(9) "Court", when used without further qualification, means the youth court of the district court.

(10) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(11) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given.

(b) The term does not include a person who has only physical custody.

(12) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense;

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation; or

(c) who has violated the terms and conditions of the youth's conditional release agreement.

(13) "Department" means the department of corrections provided for in 2-15-2301.

(14) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b).

(b) Department records do not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of court administrator.

(15) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of the terms and conditions of the youth's conditional release agreement.

(16) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(17) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(18) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(19) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through ~~41-5-1525~~ *41-5-1524*.

(20) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(21) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(22) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(23) "Habitual truancy" means recorded unexcused absences of 9 or more days or 54 or more parts of a day, whichever is less, in 1 school year.

(24) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(25) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(26) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(27) "Judge", when used without further qualification, means the judge of the youth court.

(28) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(29) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(30) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(31) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(32) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(33) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

(i) a person whose parental rights have been judicially terminated; or

(ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(34) "Probable cause hearing" means the hearing provided for in 41-5-332.

(35) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(36) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(37) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(38) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional release agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(39) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(40) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(41) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(42) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(48) "Youth care facility" has the meaning provided in 52-2-602.

(49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth alleged to have violated the terms and conditions of the youth's conditional release agreement and includes the youth court judge, juvenile probation officers, and assessment officers.

(50) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional release agreement, or violation of a valid court order.

(51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 7. Section 41-5-132, MCA, is amended to read:

"**41-5-132. Cost containment pool -- allocation of appropriated funds -- allocation from pool -- deposit of unexpended funds.** (1) (a) The office of court administrator shall establish a cost containment pool. After considering the cost containment review panel's recommendation as provided for in subsection (1)(b), the office of court administrator shall allocate to the cost containment pool at the beginning of each fiscal year not less than $1 million from the funds appropriated for juvenile placements.

(b) The cost containment review panel shall submit to the office of court administrator a recommended amount to be allocated to the cost containment pool at least 1 month prior to the start of each fiscal year. The cost containment review panel shall establish a methodology for determining the recommended amount to be allocated to the cost containment pool.

(2) Before a judicial district exceeds its annual allocation under 41-5-130 for juvenile out-of-home placements, programs, and services, the judicial district shall submit to the cost containment review panel a request for an allocation from the cost containment pool. After reviewing the request, the cost containment review panel shall recommend to the office of court administrator whether an allocation from the cost containment pool should be made to the judicial district. After considering the cost containment review panel's recommendation, the office of court administrator may approve the judicial district's request and disburse funds from the pool for expenditure by the judicial district.

(3) (a) According to criteria and procedures established by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to the department for a request submitted under subsection (3)(b).

(b) The department may request that the cost containment review panel reimburse the department from the cost containment pool for costs incurred under 41-5-1504(3) for placing a youth found to be suffering from a mental disorder, including costs for transporting the youth. Before requesting reimbursement, the department shall expend any ~~parental contributions made on behalf of the youth,~~ federal funds available for the youth's care for which the department has spending authority~~,~~ and private insurance payments received for the youth's treatment.

(4) In addition to any disbursement made by the office of court administrator under subsection (2) or (3), the office may expend funds from the cost containment pool to:

(a) reimburse cost containment review panel members or alternates for travel expenses, as provided in 2-18-501 through 2-18-503, and to pay the actual costs incurred in conducting a cost containment review panel meeting, excluding salary and benefits for employees providing support services to the cost containment review panel; and

(b) conduct an evaluation of out-of-home placements, programs, and services as provided in 41-5-2003. The office of court administrator may not expend more than $50,000 each year from the cost containment pool to conduct the evaluation.

(5) The office of court administrator shall deposit any amount remaining in the cost containment pool at the end of each fiscal year into the youth court intervention and prevention account provided for in 41-5-2011."

Section 8. Section 41-5-1304, MCA, is amended to read:

"**41-5-1304. Disposition permitted under consent adjustment.** (1) The following dispositions may be imposed by consent adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 and pursuant to a recommendation made under 41-5-121;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth pursuant to a recommendation made under 41-5-121;

(d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

(f) confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The juvenile probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The juvenile probation officer may, in the juvenile probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(g) a requirement that the youth receive counseling services;

(h) placement in a youth assessment center for up to 10 days;

(i) placement of the youth in detention for up to 3 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter;

(j) a requirement that the youth perform community service;

(k) a requirement that the youth participate in victim-offender mediation;

~~(l) an agreement that the youth pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;~~

~~(m)~~*(l)* an agreement that the youth pay a contribution covering all or a part of the costs of a victim's ~~counseling or~~ restitution for damages that result from the offense for which the youth is disposed;

~~(n)~~*(m)* any other condition ordered by the court to accomplish the goals of the consent adjustment, including but not limited to mediation or youth assessment. ~~Before ordering youth assessment, the court shall provide the family with an estimate of the cost of youth assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of youth assessment.~~

(2) ~~If the youth is placed in substitute care, an assessment placement, or detention requiring payment by any state department or local government agency, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.~~ *Pursuant to [section 1], the youth, the youth's parents, or the youth's guardian may not be required to pay a contribution covering any fees, obligations, or costs as part of a consent adjustment.*"

Section 9. Section 41-5-1412, MCA, is amended to read:

"**41-5-1412. Rights and obligations -- persons to be advised -- contempt.** (1) A person afforded rights under this chapter must be advised of those rights and any other rights existing under law at the time of the person's first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

(2) A person must be advised of obligations, including possible assessments ~~and related costs~~, that may arise under this chapter~~, including the possibility~~

~~that the person may be required to reimburse the state or local governments for costs attributable to the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth and may be required to participate in counseling, treatment, or other support services~~.

(3) A youth's parents or guardians are obligated to assist and support the youth court in implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or guardians are subject to the court's contempt powers if they fail to do so. The youth court personnel shall assist the parents to the extent possible in implementing and enforcing interventions and consequences designed to modify the youth's behavior.

(4) A parent has a right to review the results of a youth assessment and to place a rebuttal, statement, or additional information in the youth's file in youth court."

Section 10. Section 41-5-1501, MCA, is amended to read:

"**41-5-1501. Consent decree with petition.** (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the youth under supervision under this section is known as a "consent decree". Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition ~~and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care~~.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for a charge of an offense set forth in the petition and accepts responsibility for the youth's actions.

(3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) If the terms of the consent decree extend for a period in excess of 6 months, the juvenile probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would

be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult unless it is recommended by the county attorney and accepted by the youth court judge."

Section 11. Section 41-5-1503, MCA, is amended to read:

"**41-5-1503. Medical or psychological evaluation of youth -- urinalysis.** (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. ~~Except as provided in subsection (2), the~~ *The* youth court shall pay for the cost of the evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

~~(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.~~

~~(3)~~*(2)* Subject to 41-5-1512~~(1)(o)(i)~~*(1)(m)(i)*, the youth court may not order an evaluation or placement of a youth at a correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed in 41-5-206.

~~(4)~~*(3)* An evaluation of a youth may not be performed at the Montana state hospital.

~~(5)~~*(4)* In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs. *The cost of testing may not be charged to the youth, the youth's parents, or the youth's guardians.*"

Section 12. Section 41-5-1511, MCA, is amended to read:

"**41-5-1511. Dispositional hearing -- contributions by parents or guardians for expenses.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of intervention, the court shall conduct a dispositional hearing. ~~The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication, disposition, supervision, care, commitment, and treatment of the youth as required in 41-5-1525, including the costs of necessary medical, dental, and other health care.~~ *The youth's parents or guardian may not be required to contribute to the cost of adjudication, disposition, supervision, care, commitment, or treatment of the youth.*

(2) Before conducting the dispositional hearing, the court shall direct that a youth assessment or predisposition report be made in writing by a juvenile probation officer or an assessment officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case, including a statement by the victim or the victim's family. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the youth assessment or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the youth assessment or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the youth assessment or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the youth assessment or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in 41-5-1502(5) through (7). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, the youth's parents or guardian, or the public may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation."

Section 13. Section 41-5-1512, MCA, is amended to read:

"**41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments.** (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee if a committee has been established as provided for in 41-5-121.

(c) commit the youth to the youth court for the purposes of placement in a private, out-of-home facility subject to the conditions in 41-5-1522. In an order committing a youth to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person who contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based on the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

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

(l) order confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The juvenile probation officer shall notify the department of justice when the confiscated driver's license has been

returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The juvenile probation officer may, in the juvenile probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth and may not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

~~(m) order the youth to pay a contribution covering all or a part of the costs for adjudication, disposition, and attorney fees for the costs of prosecuting or defending the youth and costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;~~

~~(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;~~

~~(o)~~*(m)* defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis. ~~Except as provided in subsection (1)(o)(iii), the~~ *The* court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

~~(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.~~

~~(p)~~*(n)* order placement of a youth in a youth assessment center for up to 10 days; or

~~(q)~~*(o)* order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator.

(4) Pursuant to [section 1], the youth, the youth's parents, or the youth's guardian may not be required to pay a contribution covering any fees, obligations, or costs as part of a disposition under this section."

Section 14. Section 41-5-1513, MCA, is amended to read:

"**41-5-1513. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512~~(1)(o)(i)~~*(1)(m)(i)*, and 41-5-1522, commit the youth to the department for placement in a correctional facility or other appropriate program as determined by the department and recommend to the department that the youth not be released until the youth reaches 18 years of age. The court may not place a youth adjudicated to be a delinquent youth in

a correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a correctional facility.

(c) subject to the provisions of subsection (6), require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, the youth is exempt from the duty to register as a sexual offender pursuant to Title 46, chapter 23, part 5, unless the court finds that:

(i) the youth has previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; or

(ii) registration is necessary for protection of the public and that registration is in the public's best interest;

(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a correctional facility. Once a youth is committed to the department for placement in a correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

~~(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.~~

(2) If a youth has been adjudicated for a sexual offense, as defined in 46-23-502, the youth court shall:

(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(b) designate the youth's risk level pursuant to 46-23-509;

(c) require completion of sexual offender treatment; and

(d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose on the youth those restrictions required for adult offenders by 46-18-255(2) unless the youth is approved by the youth court or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to 41-5-205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the supervision of the offender is transferred to the department.

(3) For a youth designated under this section and 46-23-509 as a level 3 offender, the youth court if the youth is under the youth court's jurisdiction or the department if the youth is under the department's jurisdiction shall notify in writing the superintendent of the school district in which the youth is enrolled of the adjudication, any terms of probation or conditional release,

and the facts of the offense for which the youth was adjudicated, except the name of the victim, and provide a copy of the court's disposition order to the superintendent.

(4) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth, except as provided in 52-5-109.

(5) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator.

(6) The duration of registration for a youth who is required to register as a sexual or violent offender must be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration."

Section 15. Section 41-5-1703, MCA, is amended to read:

"**41-5-1703. Powers and duties of juvenile probation officers.** (1) A juvenile probation officer shall:

(a) perform the duties set out in 41-5-1302;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or conditional release or under the juvenile probation officer's supervision, including enforcement of the terms of probation or conditional release or intervention;

(d) assist any public and private community and work projects engaged in by youth to pay ~~fines, make~~ restitution~~, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention~~;

(e) perform any other functions designated by the court.

(2) A juvenile probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the juvenile probation officer's duties except that a juvenile probation officer may take into custody any youth who violates either the youth's probation, terms and conditions of the youth's conditional release agreement, or a lawful order of the court.

(3) The duties of a full-time or part-time juvenile probation officer may not be performed by a person serving as a law enforcement officer."

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

41-5-112. Parental contributions account -- allocation of proceeds.

41-5-1525. Contribution for costs -- order for contribution -- exceptions -- collection.

Section 17. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 5, part 1, and the provisions of Title 41, chapter 5, part 1, apply to [section 1].

Approved May 18, 2023

CHAPTER NO. 507

[HB 521]

AN ACT REVISING REQUIREMENTS FOR RECREATIONAL USE ON LANDS MANAGED BY STATE AGENCIES; EXPANDING THE APPLICABILITY OF CONSERVATION LICENSES TO INCLUDE ALL GENERAL RECREATION; EXPANDING THE EXISTING AGREEMENT AUTHORITY BETWEEN THE

DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; REVISING WILDLIFE CONSERVATION LICENSES TO CONSERVATION LICENSES; ESTABLISHING REPORTING REQUIREMENTS; REVISING PENALTIES; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 37-47-303, 37-47-304, 40-5-701, 76-17-102, 77-1-801, 77-1-802, 77-1-804, 77-1-815, 81-7-123, 87-1-266, 87-1-506, 87-2-106, 87-2-201, 87-2-202, 87-2-204, 87-2-403, 87-2-519, 87-2-525, 87-2-801, 87-2-803, 87-2-805, 87-2-815, 87-2-816, 87-2-817, 87-2-818, 87-6-302, AND 87-6-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 37-47-303, MCA, is amended to read:

"**37-47-303. Guide's qualifications.** An applicant for a guide's license must:

(1) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide;

(2) be endorsed and recommended by an outfitter with a valid license, unless otherwise qualified under guide standards established by the board pursuant to 37-47-201(4); and

(3) have been issued a valid ~~wildlife~~ conservation license."

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, ~~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. 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."

Section 3. Section 40-5-701, MCA, is amended to read:

"**40-5-701. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for IV-D services under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Conservation activity" means an activity for which a ~~wildlife~~ conservation license is issued by the department of fish, wildlife, and parks pursuant to 87-2-201.

(3) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(4) "Department" means the department of public health and human services.

(5) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, profession, conservation activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state or an Indian tribe that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

(12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

(a) support to a child under the laws of this or any other state or under a support order;

(b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent;

(c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support; or

(d) contributions ordered pursuant to 41-5-1525.

(13) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(14) (a) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(iv) an administrative agency of another state or an Indian tribe with a hearing function and process similar to those of the department.

(b) If an action for child support is commenced under this part and the context so requires, support order also includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

(16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by a court relating to the appearance of a party in a paternity or child support proceeding.

(17) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for services from an agency of another state or an Indian tribe under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."

Section 4. Section 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; 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 5. Section 77-1-801, MCA, is amended to read:

"**77-1-801. (Temporary) Recreational use license required to use state lands for general recreational purposes -- penalty -- exemption.** (1) Except as provided in subsection ~~(3)~~ *(2)*, a person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

~~(2) Except as provided in subsection (3), a person shall, upon the request of a peace officer or fish and game warden, present for inspection the person's recreational use license.~~

~~(3)~~*(2)* If the department and the department of fish, wildlife, and parks consent to and sign an agreement for ~~hunting, fishing, and trapping purposes~~ *general recreational use pursuant to*~~, as provided in~~ 77-1-815, a person is ~~not~~ *only* required to obtain a ~~recreational use~~ *conservation* license for *general recreational* use of legally accessible state trust land ~~for hunting, fishing, and trapping purposes~~.

(3) A person shall, on the request of a peace officer or fish and game warden, present for inspection the person's conservation license.

(4) A ~~violator~~ *person found in violation* of ~~subsection (1) or (2)~~ *this section pertaining to the use of state trust land:*

(a) for a first offense, shall be given a warning;

(b) for a second offense, is guilty of a misdemeanor and shall be fined not less than *twice the cost of a conservation license; and*

(c) for a third offense, is guilty of a misdemeanor and shall be fined not ~~$50 or~~ more than $500 ~~or be imprisoned in the county jail for not more than 6 months, or both~~. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

77-1-801. (Effective on occurrence of contingency) Recreational use license required to use state lands for general recreational purposes -- penalty. (1) A person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection the person's recreational use license.

(3) A ~~violator~~ *person found in violation* of subsection (1) or (2) *pertaining to the use of state trust land:*

(a) for first offense, shall be given a warning;

(b) for second offense, is guilty of a misdemeanor and shall be fined not less than *twice the cost of a recreational use license; and*

(c) for a third offense, is guilty of a misdemeanor and shall be fined not ~~$50 or~~ more than $500 ~~or be imprisoned in the county jail for not more than 6 months, or both~~."

Section 6. Section 77-1-802, MCA, is amended to read:

"**77-1-802. (Temporary) Recreational use -- fee.** (1) The fee for *general* recreational use on state trust land must attain full market value whether the license is sold ~~on an individual basis or on a group basis through~~ *pursuant to 77-1-801 or under* an agreement with the department of fish, wildlife, and parks as provided in 77-1-815.

(2) Money received by the department ~~from the sale of recreational use licenses~~ *for general recreational use of state lands* must be credited as follows:

(a) Except as provided in subsection (2)(b), ~~license~~ fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(b) Revenue from recreational use license fees, less 50 cents from the fee for each license that must be returned to the license dealer as a commission, is distributable revenue and must be deposited pursuant to 77-1-109 and used to pay for administrative costs as provided in 77-1-108.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

77-1-802. (Effective on occurrence of contingency) Recreational use license -- fee. (1) The fee for a recreational use license must attain full market value.

(2) Money received by the department ~~from the sale of recreational use licenses~~ *for general recreational use of state lands* must be credited as follows:

(a) Except as provided in subsection (2)(b), ~~license~~ fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

(b) Revenue from recreational use license fees, less 50 cents from the fee for each license that must be returned to the license dealer as a commission, is distributable revenue and must be deposited pursuant to 77-1-109 and used to pay for administrative costs as provided in 77-1-108.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9."

Section 7. Section 77-1-804, MCA, is amended to read:

"**77-1-804. Rules for recreational use of state lands -- penalty.** (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use.

Action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee or by the department at the request of the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

(a) cabin site and home site leases and licenses;

(b) the seasonal presence of growing crops; and

(c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) damage to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control; or

(g) the presence of buildings, structures, and facilities.

(6) (a) Rules adopted under this section may impose restrictions on general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock.

(b) The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks.

(c) Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads, trails developed by the department for motorized use, and roads designated by the department to be open to motorized vehicle use.

(d) Recreational overnight use of state lands in a 30-day period is limited to 16 days:

(i) in a designated campground; and

(ii) on unleased, unlicensed lands outside a campground unless otherwise allowed by the department.

(e) Pets on state lands must be on a leash or otherwise controlled to prevent harassment of livestock or wildlife.

(f) Horses may be kept overnight on state lands if:

(i) the horses do not remain in a stream riparian zone for more than 1 hour; and

(ii) only feed certified as noxious weed seed free is present on state lands.

(g) A horse kept overnight on state lands where there is a lease or license must be kept in compliance with the provisions of subsection (6)(f) and must be restrained.

(h) Restrictions on general recreational activities must comply with the following:

(i) at least 30 days prior to a restriction, except in the case of emergency, the lessee or the department if requested by the lessee shall:

(A) post notice of the proposed restriction at frequent access points to the land where the restriction is proposed; and

(B) issue a press release or a public service announcement detailing the proposed restriction;

(ii) except for seasonal restrictions and unless required for public safety, a restriction in an area may not exceed 1 year; and

(iii) if a misuse of the land, including littering, may lead to a restriction, common access points must be posted with notice of the possible restriction for 30 days with information detailing the misuse of land and stating the penalties for the violation. If the misuse persists at the end of 30 days, a proposed restriction notice may be posted in accordance with subsection (6)(h)(i).

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) *(a)* For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to $1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6.

(b) If the department and the department of fish, wildlife, and parks consent to and sign an agreement for general recreational use as provided in 77-1-815, a person who violates a department rule that governs general recreational use is guilty of a misdemeanor and 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.

(c) ~~Civil penalties~~ *Penalties* collected under this subsection *(8)* must be deposited as provided in 87-1-601(8).

(9) Unauthorized dumping of refuse on state lands and destruction of property, which includes land and improvements, are misdemeanor crimes punishable by a fine of not more than $1,500."

Section 8. Section 77-1-815, MCA, is amended to read:

"**77-1-815. (Temporary) ~~Recreational use agreement for hunting, fishing, and trapping~~ *Agreement for general recreational use* on legally accessible state trust land.** (1) The board is authorized to enter into an agreement with the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with ~~hunting, fishing, and trapping~~ *general recreational uses as defined in 77-1-101* on legally accessible state trust land as defined in ~~department rule~~ *77-1-101*. The department may impose restrictions it considers necessary to coordinate the uses of state trust land or to preserve the purposes of the various trust lands. ~~Hunting, fishing, and trapping~~ *General recreational uses as defined in 77-1-101* on state trust land must be conducted in accordance with rules and provisions provided in this part.

(2) An agreement may be ~~issued to~~ *entered into with* the department of fish, wildlife, and parks for a term of up to 10 years. Through this agreement, the

board shall recover for the beneficiaries of the trust the full market value for the use and impacts associated with ~~hunting, fishing, and trapping on legally accessible state trust land~~ *general recreational use on trust land, as defined in 77-1-101* The department may use funds appropriated from the trust land administration account provided for in 77-1-108 to implement and manage the agreement. Except as provided for in 17-7-304, any unexpended amount in the account that resulted from recreational use fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(3) Any agreement entered into is subject to the following conditions:

(a) The department maintains sole discretion, throughout the term of the agreement, with regard to identifying legally accessible parcels, coordinating uses on state trust land, and making any other necessary state trust land management decisions.

(b) An agreement between the department and the department of fish, wildlife, and parks may not convey any additional authority to the department of fish, wildlife, and parks.

~~(4) During any period that the department of fish, wildlife, and parks and the department have reached an agreement as provided in subsection (1), an individual recreational use license under 77-1-801 or 77-1-802 may not be required for a member of the public to hunt, fish, or trap upon legally accessible state trust land.~~ (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)"

Section 9. Section 81-7-123, MCA, is amended to read:

"**81-7-123. Voluntary wolf mitigation account.** (1) There is a voluntary wolf mitigation account in the state special revenue fund established in 17-2-102. The account is statutorily appropriated, as provided in 17-7-502, and must be used pursuant to subsection (3) of this section.

(2) The voluntary wolf mitigation account is funded by private donations. State agencies shall, as appropriate, facilitate private donations to the account, 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 livestock and the department of fish, wildlife, and parks.

(3) The department of livestock shall use the money collected pursuant to this section to contract for wolf management with the United States department of agriculture wildlife services, including but not limited to flight time, collaring, and lethal control of wolves.

(4) Funds collected pursuant to this section and paid by the department of livestock to the United States department of agriculture wildlife services are in addition to and not a substitute for any funds paid by the department to the United States department of agriculture wildlife services under any contract in effect on July 1, 2019."

Section 10. Section 87-1-266, MCA, is amended to read:

"**87-1-266. License benefits for landowners enrolled in block management program -- rulemaking.** (1) As a benefit for enrolling property in the block management program established in 87-1-265, a resident landowner may receive one ~~wildlife~~ conservation license and one Class AAA combination sports license and the necessary prerequisites, without charge, if the landowner is the owner of record. The licenses may be used for the full hunting or fishing season in any district where they are valid. The licenses may not be transferred by gift or sale.

(2) As a benefit for enrolling property in the block management program, a nonresident landowner may receive one ~~wildlife~~ conservation license and one Class B-10 nonresident big game combination license and the necessary prerequisites, without charge, if the landowner is the owner of record. The licenses may be used for the full hunting or fishing season in any district where they are valid. The 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.

(3) (a) Instead of receiving the benefits provided in subsection (1) or (2), a landowner of record who enrolls in the block management program may designate an immediate family member or employee to receive, without charge, a ~~wildlife~~ conservation license and the necessary prerequisites and:

(i) a Class AAA combination sports license if the designated person is a resident; or

(ii) a Class B-10 nonresident big game combination license if the designated person is a nonresident.

(b) For purposes of this subsection (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 (3), the term "employee" means a person who works full time and year-round for the landowner as part of 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 (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 (3) does not affect the limits established in 87-2-505.

(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 11. 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) conduct a search, with a search warrant, in accordance with Title 46, chapter 5;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) as provided for in 37-47-345, investigate violations of 37-47-301(1) and (2) and 37-47-404;

(h) 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;

(i) on the signing of an agreement as described in 77-1-815, enforce the provisions of Title 77 and rules adopted by the department of natural resources and conservation pertaining to the use of state trust lands; and

~~(i)~~*(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)(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)."

Section 12. Section 87-2-106, MCA, is amended to read:

"**87-2-106. Application for license.** (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [last four digits of the applicant's social security number,] street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to by the applicant.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall subscribe to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a ~~wildlife~~ conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

(6) A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to 87-6-922(2).

[(7) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(8) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for

the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency--sec. 3, Ch. 321, L. 2001.)"

Section 13. Section 87-2-201, MCA, is amended to read:

"**87-2-201. ~~Wildlife conservation~~ *Conservation* license *required and* prerequisite for other licenses.** *(1)* Except as provided in 87-2-803(6) and 87-2-815, it is unlawful for any person to *engage in any of the following without first having purchased a conservation license as provided in this part:*

(a) purchase or apply for a hunting, fishing, or trapping license ~~without first having obtained a wildlife conservation license as provided in this part~~*;*

(b) use lands owned or controlled by the department; or

(c) engage in general recreational use as defined in 77-1-101 on state trust land pursuant to an agreement established under 77-1-815.

(2) If the department of natural resources and conservation and the department enter into an agreement pursuant to 77-1-815, the department shall submit every other legislative session a report to the legislature in accordance with 5-11-210 that documents the number of conservation licenses sold and revenue received pursuant to this section. The first report shall be provided to the legislature by January 1, 2027."

Section 14. Section 87-2-202, MCA, is amended to read:

"**87-2-202. Application -- fee.** (1) Except as provided in 87-2-817(2), a ~~wildlife~~ conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a ~~wildlife~~ conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a ~~wildlife~~ conservation license or to receive a free ~~wildlife~~ conservation license pursuant to 87-2-817(2).

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident ~~wildlife~~ conservation licenses may be purchased for a fee of $8, of which 25 cents is a voluntary search and rescue donation.

(b) Nonresident ~~wildlife~~ conservation licenses may be purchased for a fee of $10, of which 25 cents is a voluntary search and rescue donation.

(c) A person who purchases a ~~wildlife~~ conservation license may make a written election not to pay the additional search and rescue donation in subsections (3)(a) and (3)(b). If a written election is made, the donation may not be collected.

[(4) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(5) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency--sec. 3, Ch. 321, L. 2001. The $2 ~~wildlife~~ conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)"

Section 15. Section 87-2-204, MCA, is amended to read:

"**87-2-204. Disposition of ~~wildlife~~ conservation license fees.** The fees from the ~~wildlife~~ conservation license must be delivered to the state treasurer and deposited by the treasurer in the state special revenue fund to the credit of the department in accordance with the provisions of 87-1-601."

Section 16. Section 87-2-403, MCA, is amended to read:

"**87-2-403. Wild turkey tags and fee.** (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident ~~wildlife~~ conservation license. Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is $6.50 for a resident and $115 for a nonresident, except that a nonresident holder of a valid Class B-1, Class B-10, or Class B-11 license may purchase a wild turkey tag for one-half of the nonresident fee. Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules."

Section 17. Section 87-2-519, MCA, is amended to read:

"**87-2-519. Class D-4--nonresident hound license.** (1) Except as provided in subsections (5) and (6), in order for a nonresident to use a dog or dogs to aid in the pursuit or harvest of mountain lions or black bears, the nonresident shall first purchase, for a fee of $250, a Class D-4 nonresident hound license. To be eligible, the nonresident must be:

(a) at least 18 years of age or older or turn 18 years of age before or during the season for which the license is issued; and

(b) a holder of a nonresident ~~wildlife~~ conservation license and a Class D-1 nonresident mountain lion license or a special nonresident black bear license.

(2) Not more than 80 Class D-4 licenses may be sold in any 1 license year.

(3) A Class D-4 license must be used as authorized by this section and any rule adopted by the department or commission.

(4) A holder of a Class D-4 license may only pursue mountain lions or black bears for the purpose of personally harvesting an animal and may not assist any other person in the pursuit of a lion or bear for harvest.

(5) A nonresident is not required to have a Class D-4 license to use a dog or dogs to aid in the pursuit or harvest of mountain lions or black bears when the nonresident:

(a) is hunting with an outfitter licensed pursuant to Title 37, chapter 47, part 3; or

(b) is a nonresident landowner who owns 640 or more contiguous acres. Nonpaying guests of the nonresident landowner may also hunt and pursue mountain lions or black bears on the landowner's property and any adjacent public land within 2 miles of the landowner's property without a Class D-4 license.

(6) A nonresident outfitter or guide licensed pursuant to Title 37, chapter 47, part 3, is not required to have a Class D-4 license.

(7) After recovering the costs associated with license administration, the department shall use revenue collected from the sale of licenses pursuant to this section for the management, conservation, and monitoring of mountain lions and black bears."

Section 18. Section 87-2-525, MCA, is amended to read:

"**87-2-525. Nonresident college student licenses.** (1) Subject to the provisions of subsection (2), a student who is not a resident, as defined in 87-2-102, and who meets the qualifications of subsection (3) may purchase discounted hunting and fishing licenses as follows:

(a) If the student's state of residence does not offer resident-rate licenses to Montanans who are full-time college students in that state, the student may purchase the following for one-half of the cost:

(i) one of the following:

(A) a Class B-10 nonresident big game combination license;

(B) a Class B-11 nonresident deer combination license; or

(C) a nonresident elk-only combination license;

(ii) if available:

(A) a Class B-8 nonresident deer B tag; and

(B) a Class B-12 nonresident antlerless elk B tag license.

(b) If the student's state of residence offers resident-rate licenses to Montanans who are full-time college students in that state and as long as a drawing for the equivalent resident license is not required, the student may purchase for the same price as the equivalent resident license:

(i) (A) any of the following:

(I) a Class B-30 nonresident college student fishing license;

(II) a Class B-31 nonresident college student upland game bird license;

(III) a Class B-32 nonresident college student deer A tag; and

(IV) a Class B-33 nonresident college student elk tag; or

(B) a Class B-34 nonresident college student big game combination license that entitles the holder to all the privileges of the licenses listed in subsection (1)(b)(i)(A) and a nonresident ~~wildlife~~ conservation license;

(ii) a Class B-35 nonresident college student migratory game bird license;

(iii) a Class B-36 nonresident college student turkey tag;

(iv) a Class B-37 nonresident college student deer B tag; and

(v) a Class B-38 nonresident college student antlerless elk B tag.

(2) (a) The holder of a license purchased pursuant to this section is entitled to use that license to hunt or fish, as relevant, and to possess the carcass of the species taken in the manner prescribed by the rules and regulations of the commission and department.

(b) A student may not purchase a license pursuant to this section for more than 4 license years.

(3) (a) To qualify for a license issued pursuant to this section, a student may not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country and must:

(i) be currently enrolled as a full-time undergraduate student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time;

(ii) be currently enrolled as a full-time graduate student at a postsecondary educational institution in the state, with 9 credits or more being considered full-time unless otherwise defined by the academic department in which the student is enrolled; or

(iii) (A) have a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(B) have a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has a high school equivalency diploma issued in Montana; and

(C) be currently enrolled as a full-time student at a postsecondary educational institution in another state.

(b) A student is not eligible to receive a license pursuant to this section if the student is enrolled in a degree program that is exclusively delivered online.

(4) Application for a license issued pursuant to this section may be made after the second Monday in September at any department regional office or

at the department headquarters in Helena. To qualify, the applicant shall present a valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department.

(5) Class B-10 and Class B-11 licenses issued pursuant to this section are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses issued pursuant to this section are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511."

Section 19. 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;

(2) a Class A fishing license;

(3) a Class A-1 upland game bird license;

(4) a Class A-3 deer A tag;

(5) a Class A-5 elk tag;

(6) a Class AAA combination sports license that does not include a Class A-6 black bear tag."

Section 20. 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 21. 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;

(b) a Class A fishing license;

(c) a Class A-1 upland game bird license;

(d) a migratory game bird license;

(e) a Class A-3 deer A tag;

(f) a Class A-5 elk tag;

(g) a Class AAA combination sports license that does not include a Class A-6 black bear tag. This subsection (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)(g). A resident minor who lawfully purchases a Class AAA license pursuant to this subsection (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 22. 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;

(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 23. Section 87-2-816, MCA, is amended to read:

"**87-2-816. Licenses for legion of valor members -- purple heart awardees.** (1) A resident, as defined in 87-2-102, or a nonresident who is a legion of valor member is entitled to fish with a ~~wildlife~~ conservation license issued by the department.

(2) A resident, as defined in 87-2-102, awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with the purchase of a ~~wildlife~~ conservation license pursuant to 87-2-202 and a resident aquatic invasive species prevention pass pursuant to 87-2-130.

(3) A nonresident awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with the purchase of a ~~wildlife~~ conservation license pursuant to 87-2-202 and a nonresident aquatic invasive species prevention pass pursuant

to 87-2-130 during expeditions arranged for the nonresident by a nonprofit organization that uses fishing and hunting as part of the rehabilitation of disabled veterans.

(4) 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 license costs associated with the fishing and game bird hunting privileges granted pursuant to subsections (2) and (3) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue."

Section 24. 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)(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).

(c) To be eligible for the free 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).

(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."

Section 25. Section 87-2-818, MCA, is amended to read:

"**87-2-818. Law enforcement officers and firefighters critically injured in line of duty.** A law enforcement officer, as defined in 7-32-201, a firefighter, or a volunteer firefighter who was critically injured in the line of duty and is permanently unable to return to work because of the injury is entitled to fish with a ~~wildlife~~ conservation license issued by the department during expeditions arranged for the person by a nonprofit organization that uses fishing as part of the rehabilitation of injured or disabled persons."

Section 26. 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 27. Section 87-6-303, MCA, is amended to read:

"**87-6-303. Nonresident license or permit offenses.** (1) A person who is not a resident may not:

(a) apply for or purchase for a nonresident's use the following resident licenses and permits:

(i) ~~wildlife~~ conservation license;

(ii) hunting license or permit; or

(iii) fishing license or permit;

(b) affirm to or make a false statement to obtain a resident license.

(2) A person convicted of a violation of this section shall be fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 18 months."

Section 28. Appropriation. (1) For the biennium beginning July 1, 2023, in each fiscal year there is appropriated $670,000 from the state special revenue fund established in 87-1-601 to the department of fish, wildlife, and parks.

(2) The legislature intends for the appropriation provided for in subsection (1) be considered part of the ongoing base for the next legislative sessions.

Section 29. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 508

[HB 534]

AN ACT INCREASING THE CAP FOR COLLECTIONS RELATED TO ACTIONS BROUGHT BEFORE A MUNICIPAL COURT; AND AMENDING SECTION 3-6-103, MCA.

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

Section 1. Section 3-6-103, MCA, is amended to read:

"**3-6-103. Jurisdiction.** (1) ~~The~~ *Except as provided in subsection (2), the* municipal court has jurisdiction coordinate and coextensive with the justices' courts of the county where the city is located and has exclusive original jurisdiction of all civil and criminal actions and proceedings provided for in 3-11-103.

(2) The municipal court has original jurisdiction of the following proceedings:

(a) actions for the collection of money due to the city or from the city to any person when the amount sought, exclusive of interest and costs, does not exceed $25,000;

(b) when the amount claimed, exclusive of costs, does not exceed $25,000, actions for:

(i) the breach of an official bond given by a city officer;

(ii) the breach of any contract when the city is a party or is in any way interested;

(iii) damages when the city is a party or is in any way interested;

(iv) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city; and

(v) collections on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (2)(b)(i) through (2)(b)(iv); and

(c) actions for the recovery of personal property belonging to the city when the value of the property, exclusive of the damages for taking or detention, does not exceed $25,000.

~~(2)~~*(3)* Municipal courts have concurrent jurisdiction with the district court in actions arising under Title 70, chapters 24 through 27.

~~(3)~~*(4)* Applications for search warrants and complaints charging the commission of a felony may be filed in municipal court. The municipal court

judge has the same jurisdiction and responsibility as a justice of the peace, including holding preliminary hearings. The city attorney may initiate proceedings charging a felony if the offense was committed within the city limits, but the county attorney shall take charge of the action if an information is filed in district court."

Approved May 18, 2023

CHAPTER NO. 509

[HB 541]

AN ACT REQUIRING INTEREST TO BE LEVIED ON CRIMINAL RESTITUTION AND FINES; PROVIDING AN INTEREST RATE; AMENDING SECTIONS 46-18-201, 46-18-231, 46-18-241, AND 46-18-251, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 46-18-201, MCA, is amended to read:

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

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 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) (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 suspend execution of sentence, except as provided in subsection (2)(b) or 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.

(b) (i) Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner that would result in an offender being supervised in the community as a probationer by the department of corrections for a period of time longer than:

(A) 20 years for a sexual offender, as defined in 46-23-502;

(B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated homicide, as defined in 45-5-103;

(C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous drug, as provided in 45-9-101(5);

(D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-125, 45-9-127, or 45-9-132; or

(E) 5 years for all other felony offenses.

(ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to protect society or the victim.

(iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301 if the amount of restitution ordered exceeds $50,000.

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

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

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

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

(iv) commitment of:

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

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

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

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

(vii) any combination of subsection (2) and this subsection (3)(a).

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

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

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

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

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine *and accrued interest* 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 aggravated driving under the influence as defined in 61-8-1001, a violation of 61-8-1002, 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 *and interest* to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

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

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

Section 2. Section 46-18-231, MCA, is amended to read:

"**46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

(viii) 45-5-503(2) through (5), sexual intercourse without consent;

(ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(x) 45-5-508, aggravated sexual intercourse without consent;

(xi) 45-5-601(3) or (4), 45-5-602(3) or (4), or 45-5-603(2)(b) or (2)(c), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was a child and the offender was 18 years of age or older at the time of the offense or when the person engaging in prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the offender was 18 years of age or older at the time of the offense and the offender knew or reasonably should have known that the person was a victim of human trafficking or was subjected to force, fraud, or coercion;

(xii) 45-5-625(4), sexual abuse of children;

(xiii) 45-5-702, 45-5-703, 45-5-704, or 45-5-705, trafficking of persons, involuntary servitude, sexual servitude, or patronizing a victim of sexual servitude;

(xiv) 45-9-101(3), criminal possession with intent to distribute a dangerous drug; and

(xv) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine *and interest*. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine *and interest* will impose.

(4) ~~Any~~ *Except as provided in subsection (5), a* fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000.

(5) If an offender is out of compliance with court-mandated payments for 6 months or more, interest must accrue on a fine levied under this section at a rate of 3%. The interest may not compound. Interest only begins to accrue when the judgment is placed for collection with a private person or entity as provided in 3-10-601, 25-30-102, or 46-17-303. "

Section 3. Section 46-18-241, MCA, is amended to read:

"**46-18-241. (Temporary) Condition of restitution -- *interest.*** (1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss. *Full restitution includes the interest required by subsection (4).* The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid, whether or not the offender is under state supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or parole.

(2) (a) The offender shall pay the cost of supervising the payment of restitution, as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part 1, the restitution must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).

(c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part 1, the restitution must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed.

(4) If an offender is out of compliance with court-mandated payments for 6 months or more, interest must accrue on restitution ordered under this section at a rate of 3%. The interest may not compound. Interest only begins to accrue when the judgment is placed for collection with a private person or entity as provided in 3-10-601, 25-30-102, or 46-17-303. (Terminates June 30, 2027--secs. 1, 2, 3, Ch. 139, L. 2021.)

46-18-241. (Effective July 1, 2027) Condition of restitution -- *interest.* (1) As provided in 46-18-201, a sentencing court shall, as part of

the sentence, require an offender to make full restitution to any victim who has sustained a pecuniary loss, including a person suffering an economic loss. *Full restitution includes the interest required by subsection (4).* The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid, whether or not the offender is under state supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or parole.

(2) (a) The offender shall pay the cost of supervising the payment of restitution, as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).

(c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed.

(4) If an offender is out of compliance with court-mandated payments for 6 months or more, interest must accrue on restitution ordered under this section at a rate of 3%. The interest may not compound. Interest only begins to accrue when the judgment is placed for collection with a private person or entity as provided in 3-10-601, 25-30-102, or 46-17-303."

Section 4. Section 46-18-251, MCA, is amended to read:

"**46-18-251. (Temporary) Allocation of fines, costs, restitution, *interest,* and other charges.** (1) Except as provided in 46-18-236(7)(b), if a misdemeanor offender is subjected to any combination of fines, costs, restitution, charges, *interest,* or other payments arising out of the same criminal proceeding, money that the court collects from the offender must be allocated as provided in this section. A felony offender shall pay restitution *and interest on restitution* to the department of corrections, and other fines*, interest on fines,* and costs must be paid to the court and allocated as provided in this section.

(2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, *interest,* or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(b) payment of supervisory fees imposed pursuant to 46-23-1031;

(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(e) any other payments ordered by the court.

(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:

(a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(b) 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;

(c) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(4) If any fines, costs, charges, *interest,* or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, *interest,* or other payments. If any restitution remains unpaid after all of the fines, costs, charges, *interest,* or other payments have been paid, any additional money collected must be applied toward payment of the restitution. (Terminates June 30, 2027--secs. 1, 2, 3, Ch. 139, L. 2021.)

46-18-251. (Effective July 1, 2027) Allocation of fines, costs, restitution, *interest,* and other charges. (1) Except as provided in 46-18-236(7)(b), if an offender is subjected to any combination of fines, costs, restitution, charges, *interest,* or other payments arising out of the same criminal proceeding, money collected from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, *interest,* or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(b) payment of supervisory fees imposed pursuant to 46-23-1031;

(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(e) any other payments ordered by the court.

(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:

(a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(b) 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;

(c) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(4) If any fines, costs, charges, *interest,* or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, *interest,* or other payments. If any restitution remains unpaid after all of the fines, costs, charges, *interest,*

or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

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 sentences entered for offenses that were committed on or after [the effective date of this act].

Approved May 18, 2023

CHAPTER NO. 510

[HB 549]

AN ACT AUTHORIZING THE ESTABLISHMENT OF PUBLIC CHARTER SCHOOLS AND DISTRICTS AS A MEANS OF PROVIDING ADDITIONAL EDUCATIONAL OPPORTUNITIES; PROVIDING LEGISLATIVE FINDINGS AND INTENT; DEFINING "PUBLIC CHARTER SCHOOL" AND PROVIDING OTHER DEFINITIONS; PRESCRIBING DUTIES FOR THE BOARD OF PUBLIC EDUCATION AND REQUIRED ELEMENTS OF CHARTER APPLICATIONS AND CHARTER CONTRACTS; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING ENROLLMENT AND GOVERNANCE REQUIREMENTS FOR PUBLIC CHARTER SCHOOLS; PROVIDING FOR THE CREATION, RENEWAL, REVOCATION, AND CLOSURE OF PUBLIC CHARTER SCHOOLS; PROVIDING FOR PERFORMANCE MEASURES FOR PUBLIC CHARTER SCHOOLS; PROVIDING FOR FUNDING OF PUBLIC CHARTER SCHOOLS; ESTABLISHING THE PUBLIC CHARTER SCHOOL ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 14] may be cited as the "Public Charter Schools Act".

Section 2. Public charter schools -- legislative findings and intent. (1) The legislature finds that:

(a) parents desire education options for their children;

(b) expanding educational opportunities for K-12 education within the state is a necessary and valid public purpose; and

(c) creating options that assist parents and encourage students to develop their full educational potential is vital to the economic competitiveness of the state.

(2) It is the legislature's intent to establish public charter schools that are under the supervision and control of trustees who are elected by qualified electors pursuant to Article IV, section 2, and Article X, section 8, of the Montana constitution for the purposes of:

(a) enhancing Montana's system of education to develop the full educational potential of each person;

(b) enabling parents to make decisions on how best to educate their children;

(c) providing other public educational opportunities for all students, especially those at risk of academic failure;

(d) encouraging and inspiring the use of different models of teaching, governing, scheduling, and providing instruction in both public charter schools and noncharter public schools to meet a variety of student needs;

(e) advancing Montana's commitment to the preservation of American Indian cultural identity, pursuant to Article X, section 1(2), of the Montana

constitution, and to the elimination of the American Indian achievement gap by encouraging students, parents, and community members in Indian country to pursue alternative educational opportunities through public charter schools; and

(f) ensuring accountability to the qualified electors and taxpayers in the community in which the charter school is located.

(3) It is the legislature's intent to create innovative and high-performing public charter schools under the general supervision of the board of public education and under the supervision and control of trustees of the governing board who are elected by qualified electors in the community where the charter school is located.

Section 3. Definitions. As used in [sections 1 through 14], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means a group of residents of the located school district or county of the located school district or the local school board of the located school district that submits a proposal for a public charter school to the board of public education.

(2) "Board of public education" means the board created by Article X, section 9(3), of the Montana constitution and 2-15-1507. For the purposes of public charter schools established under [sections 1 through 14], the board of public education is the sole entity authorized to enter into charter contracts with a governing board.

(3) "Charter contract" means a fixed-term, renewable contract between a governing board of a public charter school and the board of public education that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(4) "Governing board" means the elected board of trustees of a public charter school district exercising supervision and control over a charter school or the local school board that is a party to the charter contract with the board of public education and that exercises supervision and control over a charter school pursuant to the charter contract.

(5) "Local school board" means a preexisting board of trustees exercising supervision and control of the schools and programs of a local school district pursuant to Article X, section 8, of the Montana constitution and the laws of the state of Montana.

(6) "Located school district" means the school district in which a proposed, preoperational, or operational public charter school is located and from which the separate boundaries of the charter school district are proposed to be formed. When a charter school district is formed, the boundaries of the charter school district are removed from the territory of the located school district.

(7) "Noncharter public school" means a public school that is under the supervision and control of a local school board or the state and is not operating under a charter contract pursuant to [section 6].

(8) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.

(9) "Public charter school" means a public school that:

(a) has autonomy over decisions including but not limited to matters concerning finance, personnel, scheduling, curriculum, and instruction as defined in a charter contract;

(b) is governed by a local school board or, in the case of a governing board other than a local school board, by the governing board of the charter school district of which the charter school is a part;

(c) is established and operated under the terms of a charter contract;

(d) allows parents choose to enroll their children;

(e) admits students on the basis of a lottery if more students apply for admission than can be accommodated;

(f) provides a program of education that may include any or all grades from kindergarten through grade 12 and vocational education programs;

(g) operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(h) operates under the general supervision of the board of public education in accordance with its charter contract; and

(i) if the school is a high school, establishes graduation requirements and has authority to award degrees and issue diplomas.

(10) "Resident school district" means the public school district in which a student resides.

(11) "Student" means a child who is eligible for attendance in a public school in the state.

Section 4. Board of public education responsibilities. (1) In accordance with [sections 1 through 14], the board of public education is responsible for executing the following essential powers and duties:

(a) soliciting and evaluating charter proposals;

(b) approving charter proposals that meet identified educational needs and promote a diversity of educational choices, including but not limited to:

(i) increasing standards for student achievement;

(ii) closing achievement gaps between high-performing and low-performing groups of public school students;

(iii) increasing educational opportunities within the public education system;

(iv) providing alternative learning environments for students who are not thriving in traditional school settings;

(v) lowering the dropout rate;

(vi) creating new professional opportunities for teachers and other school personnel;

(vii) encouraging the use of different models of teaching and learning; and

(viii) providing students, parents, community members, and local entities with expanded opportunities for involvement in the public education system;

(c) denying approval of charter proposals that fail to provide clear and convincing proof of their likelihood of success;

(d) negotiating and executing sound charter contracts with each approved public charter school;

(e) monitoring approved public charter schools' performance and legal compliance with charter contract terms; and

(f) determining whether each charter contract merits renewal, nonrenewal, or revocation.

(2) On or before December 1 of each year, beginning in the first year that a public charter school has been in operation for a full school year, the board of public education shall publish to the board's website and submit to the legislature in accordance with 5-11-210 an annual report on the state's public charter schools for the school year ending in the preceding calendar year. The annual report must include:

(a) a comparison of the performance of public charter school students with the performance of academically, ethnically, and economically comparable groups of students in noncharter public schools; and

(b) the board's assessment of the successes, challenges, and areas for improvement in meeting the purposes of [sections 1 through 14], including the board's assessment of the sufficiency of funding for public charter schools

and any suggested changes in state law or policy necessary to strengthen the state's public charter schools.

Section 5. Public charter school proposal process. (1) To solicit, encourage, and guide the development of public charter schools, the board of public education shall issue and broadly publicize a request for proposal by October 1 in 2023 and by June 1 of each year thereafter. The content and dissemination of the request for proposal must be consistent with the purposes and requirements of [sections 1 through 14].

(2) The request for proposal must include:

(a) the criteria that will guide the board's decision to approve or deny a charter proposal;

(b) clear and detailed questions designed to gauge an applicant's capacity to establish and operate a successful public charter school, as well as guidelines concerning the format and content of an applicant's response to the request for proposal.

(3) A request for proposal must require applicants to describe thoroughly the following essential elements of their public charter school proposal:

(a) an executive summary;

(b) the mission and vision of the proposed public charter school, including identification of the targeted student population and the community the school proposes to serve;

(c) the school district in which the public charter school is proposed to be located and operate;

(d) the grades to be served each year for the full term of the charter contract;

(e) the minimum, planned, and maximum enrollment per year for the term of the charter contract;

(f) specific evidence:

(i) of significant community support for the proposed public charter school; and

(ii) for an applicant that is not a local school board:

(A) that the applicant has sought from the local school board the creation of a school or program of the located school district serving the mission and vision of the proposed public charter school;

(B) the local school board declined to create the school or program or submit to the board of public education a proposal for the creation of a public charter school consistent with the mission and vision of the proposed public charter school; and

(C) a legal description of the property of the existing school district from which the boundaries of the charter school district are proposed to be formed;

(g) for an applicant that is not a local school board, background information on the initial governing board members and, if identified, the proposed school leadership and management team;

(h) the proposed public charter school's proposed calendar and sample daily schedule;

(i) a description of the academic program, including:

(i) plans to formally assess student achievement on an annual basis; and

(ii) variances to existing standards that the proposed public charter school requires;

(j) a description of the proposed public charter school's instructional design, including the type of learning environment, class size and structure, curriculum overview, and teaching methods;

(k) the proposed public charter school's plans for identifying and successfully serving students with disabilities, students who are English language learners,

students who are academically challenged, and gifted students, including but not limited to compliance with applicable laws and regulations;

(l) a description of cocurricular or extracurricular programs, if any, and how the programs will be funded and delivered;

(m) plans and timelines for student recruitment and enrollment, including lottery procedures;

(n) the proposed public charter school's student discipline policies, including those for special education students;

(o) an organizational chart that clearly presents the proposed public charter school's organizational structure, including lines of authority and reporting between the governing board, staff, related bodies such as advisory bodies or parent and teacher councils, and external organizations that will play a role in managing the school;

(p) a clear description of the roles and responsibilities for the governing board, the proposed public charter school's leadership and management team, and other entities shown in the organizational chart;

(q) a staffing chart for the proposed public charter school's first year and a staffing plan for the term of the charter;

(r) plans for recruiting and developing school leadership and staff;

(s) the proposed public charter school's leadership and teacher employment policies, including performance evaluation plans;

(t) proposed governing bylaws;

(u) explanations of any partnerships or contractual relationships central to the proposed public charter school's operations or mission;

(v) the proposed public charter school's plans for providing transportation, food service, and all other significant operational or ancillary services, if any;

(w) opportunities and expectations for parent involvement;

(x) a detailed school startup plan, identifying tasks, timelines, and responsible individuals;

(y) a description of the proposed public charter school's financial plan and policies, including financial controls and audit requirements;

(z) a description of the insurance coverage the proposed public charter school will obtain;

(aa) startup and 5-year budgets with clearly stated assumptions;

(bb) startup and first-year cash flow projections with clearly stated assumptions;

(cc) evidence of anticipated fundraising contributions, if claimed in the proposal; and

(dd) a sound facilities plan, including backup or contingency plans, if appropriate.

(4) If a public charter school proposal does not contain the elements required in subsection (3), the board shall consider the proposal incomplete and return the proposal to the applicant without taking further action.

(5) In reviewing and evaluating charter proposals, the board shall employ procedures, practices, and criteria consistent with nationally recognized best practices, principles, and standards for the authorization of public charter schools. The proposal review process must include thorough evaluation of each written charter proposal, an in-person interview with the applicant, and an opportunity in a public forum for local residents to learn about and provide input on each proposal.

(6) In deciding whether to approve charter proposals, the board shall:

(a) grant charters only to applicants that have demonstrated competence in each element of the board's published approval criteria and are likely to open and operate a successful public charter school;

(b) base decisions on documented evidence collected through the proposal review process;

(c) for an applicant that is not a local school board, request input from the qualified electors of the located school district regarding concerns about the applicant's proposal being approved;

(d) follow charter-granting policies and practices that are transparent and are based on merit and avoid conflicts of interest or any appearance of conflict; and

(e) weigh heavily the evidence of community support, the projected student enrollment, and the input received under subsection (6)(c) and only approve charters whose promise of improved educational outcomes outweighs potential increased costs to state and local taxpayers.

(7) (a) The board shall approve or deny a charter proposal within 90 days after the filing of the charter proposal. When approval is granted to a governing board other than a local school board, the approval constitutes corresponding approval of the creation of a separate charter school district, the boundaries for which consist of the legal description of the campus of the charter school. These boundaries must be removed from the boundaries of the located school district for the purpose of establishing a distinct boundary for the charter school district that is subject to exclusive supervision and control by the governing board of the charter school district.

(b) The board shall adopt by resolution all charter approval or denial decisions in an open meeting.

(c) An approval decision may include, if appropriate, reasonable conditions that the applicant must meet before a charter contract may be executed pursuant to [section 6].

(d) For any charter denial, the board shall clearly state for the public record the reasons for denial.

Section 6. Charter contract -- terms. (1) An initial charter must be granted for a term of 5 operating years, commencing on July 1 of the first school year the public charter school will operate. An approved public charter school may delay its opening for 1 school year to plan and prepare for the school's opening. If the school requires an opening delay of more than 1 school year, the school shall request an extension from the board of public education. The board of public education may grant or deny the extension depending on the school's circumstances.

(2) Within 45 days of approval of a charter proposal, the board of public education and the governing board of the approved public charter school district shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the public charter school will be judged.

(3) The performance provisions of the charter contract may be refined or amended by mutual agreement after the public charter school is operating and has collected baseline achievement data for its enrolled students.

(4) The charter contract must be signed by the presiding officers of the board of public education and the public charter school's governing board.

(5) A public charter school may not commence operations without a charter contract executed in accordance with this section and approved in an open meeting of the board of public education.

(6) The board of public education may establish reasonable preopening requirements or conditions to monitor the startup progress of a newly approved public charter school to ensure that the school is prepared to open smoothly on the date agreed and to ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening.

Section 7. Governing board -- initial board -- elections -- terms. (1) Subsections (2) through (5) apply to a public charter school not governed by the local school board.

(2) The governing board of a public charter school district must be composed of 7 members. The boundaries of the charter school district consist of the legal description of the campus of the charter school. A majority of the governing board members must be qualified electors of the county in which the public charter school is located. Members must:

(a) be qualified electors in the county in which the public charter school is located or a contiguous county but need not be qualified electors of the located school district; and

(b) possess documented knowledge or experience in the mission or focus of the public charter school.

(3) An applicant for a proposed public charter school shall identify the members of the initial governing board of the charter school district of which the charter school is a part in the proposal submitted to the board of public education. The initial governing board is responsible for preoperation of and initial operation of the public charter school.

(4) At the regular school election in the first year of operation of a public charter school, members must be elected by the qualified electors of the located school district in the same manner as local school boards, except as provided in subsections (2) and (5), in an election conducted by the local school board in the school district in which the public charter school is located. Any elector qualified to vote in the located school district under the provisions of 20-20-301 may vote.

(5) Members of governing boards serve for terms of 5 years, and the terms of members must be staggered to ensure continuity on the governing board.

(6) If the governing board of a public charter school is the local school board, the governing board shall establish and appoint members of an advisory board to provide recommendations and insight regarding the public charter school's operations. Members of the advisory board must include members with knowledge or experience in the mission or focus of the public charter school.

Section 8. Enrollment. (1) (a) A public charter school must be open to any student residing in the state.

(b) A school district may not require a student enrolled in the school district to attend a public charter school.

(c) A public charter school may limit admission to students within a given age group or grade level.

(d) A public charter school may be organized for a special emphasis, theme, or concept as stated in the school's proposal.

(e) A public charter school shall enroll all students who wish to attend the school unless the number of students exceeds the capacity of a program, class, grade level, or building.

(f) If capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students through a lottery.

(2) (a) A public charter school shall give enrollment preference to students who are residents of the located school district.

(b) A public charter school may give enrollment preference to:

(i) students who were enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. An enrollment preference for returning students excludes those students from entering a lottery.

(ii) children of members of a public charter school's governing board and full-time employees, limited to no more than 10% of the school's total student population.

(3) This section does not preclude the formation of a public charter school for the purpose of serving students with disabilities, students of the same gender, students who pose a sufficiently severe disciplinary problem to warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend such a school, the public charter school shall select students through a lottery.

(4) If a student who was previously enrolled in a public charter school enrolls in any other public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the public charter school.

(5) A school district shall provide or publicize to parents and the general public information about public charter schools as an enrollment option within the district to the same extent and through the same means that the district provides and publicizes information about noncharter public schools in the district.

(6) The board of public education may not restrict the number of students a public charter school may enroll. The capacity of the public charter school must be determined annually by the governing board in consideration of the public charter school's ability to facilitate the academic success of its students, to achieve the objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the capacity of its facility or site.

Section 9. Charter school performance and renewal. (1) The performance provisions within the charter contract must be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the board of public education's evaluations of each public charter school. The performance framework must include indicators, measures, and metrics for, at a minimum:

(a) student academic proficiency;

(b) student academic growth;

(c) achievement gaps in both proficiency and growth between major student subgroups;

(d) attendance;

(e) recurrent enrollment from year to year;

(f) postsecondary readiness;

(g) financial performance and sustainability; and

(h) governing board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(2) Each public charter school shall set annual performance targets designed to help each school meet applicable federal, state, and board of public education expectations.

(3) (a) The contract performance framework must allow the inclusion, with the board of public education's approval, of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance that are consistent with the purposes of [sections 1 through 14].

(b) The board of public education shall collect and analyze data from each public charter school it oversees in accordance with the performance framework.

(c) Multiple schools operating under a single charter contract or overseen by a single governing board of a charter school district shall report their

performance as separate, individual schools. Each school must be held independently accountable for its performance.

(4) (a) The board of public education shall monitor the performance and legal compliance of each public charter school district and each public charter school, including collecting and analyzing data to support ongoing evaluation according to the charter contract. The board of public education has the authority to conduct or require oversight activities that do not unduly inhibit the autonomy granted to public charter schools and the supervision and control of a public charter school's governing board but that enable the board to fulfill its responsibilities under [sections 1 through 14], including conducting appropriate inquiries and investigations consistent with the intent of [sections 1 through 14], and to adhere to the terms of the charter contract.

(b) The board of public education shall annually publish a performance report for each public charter school within the performance framework set forth in the charter contract and [section 10]. The board may require each public charter school it oversees to submit an annual report to assist the board in gathering complete information about each school, consistent with the performance framework.

(c) In the event that a public charter school's performance or legal compliance appears unsatisfactory, the board of public education shall promptly notify the governing board of the perceived problem and provide a reasonable opportunity for the school to remedy the problem.

(d) The board of public education may take appropriate corrective action or exercise sanctions short of revocation in response to apparent deficiencies in public charter school performance or legal compliance. The action or sanctions may include, if warranted, requiring a governing board to develop and execute a corrective action plan within a specified timeframe.

(5) (a) A charter may be renewed for successive 5-year terms, although the board of public education may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school. The board may grant renewal with specific conditions for necessary improvement to a public charter school.

(b) No later than June 30 of each year, the board of public education shall issue a public charter school performance report and charter renewal application guide to the governing board of any public charter school whose charter will expire the following year. The performance report must summarize the public charter school's performance record to date, based on the data required by [sections 1 through 14] and the charter contract, and must provide notice of any weaknesses or concerns perceived by the board concerning the public charter school that may jeopardize renewal if not promptly rectified. The public charter school shall respond to the performance report and submit any corrections or clarifications within 90 days.

(6) The renewal application guide must, at a minimum, provide an opportunity for the governing board of the public charter school to:

(a) present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(b) describe improvements undertaken or planned for the public charter school; and

(c) detail the public charter school's plans for the next charter term.

(7) The renewal application guide must include or refer explicitly to the criteria that will guide the board's renewal decisions, based on the performance framework set forth in the charter contract and consistent with [sections 1 through 14].

(8) (a) No later than February 1, the governing board of a public charter school seeking renewal shall submit a renewal application to the board of public education pursuant to the renewal application guide. The board of public education shall rule by resolution on the renewal application no later than 30 days after the filing of the renewal application.

(b) When considering charter renewal, the board of public education shall:

(i) base its decision on evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(ii) ensure that the data used in making renewal decisions is available to the school and the public; and

(iii) provide a public report summarizing the basis for each decision.

Section 10. Charter contract revocation and school closure or charter contract nonrenewal. (1) A charter contract may be subject to nonrenewal or revocation if the board of public education determines that the public charter school:

(a) committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under [sections 1 through 14] or the charter contract and from which the public charter school was not exempted;

(b) failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) failed to meet public safety standards; or

(d) failed to meet generally accepted standards of fiscal management.

(2) The board of public education shall develop revocation and nonrenewal processes that:

(a) provide the governing board with timely notification of the prospect of revocation or nonrenewal and of the reasons for the possible closure;

(b) allow the governing board a reasonable amount of time in which to prepare a response;

(c) provide the governing board an opportunity to submit documents and testimony at a hearing to challenge the rationale for the closure recommendation and in support of the continuation of the school;

(d) allow the governing board to be represented by counsel and call witnesses on their behalf;

(e) permit the recording of the proceedings; and

(f) provide for a final determination conveyed in writing to the governing board.

(3) If the board of public education revokes or denies renewal of a charter, the board shall clearly state, by resolution, the reasons for the revocation or nonrenewal.

(4) Within 10 days of taking action to renew, not renew, or revoke a charter, the board of public education shall provide a copy of the resolution setting forth the action taken and reasons for the decision.

(5) (a) Prior to a public charter school closure, the board of public education shall develop a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of [sections 1 through 14]. The protocol must specify responsible parties, transition and closure timelines, and a delineation of the respective duties of the governing board of the public charter school and the board of public education.

(b) The board of public education shall oversee the closure and work with the governing board of the public charter school to ensure a smooth and orderly closure and transition for students and parents.

(c) In the event of a public charter school closure for any reason, the nonrestricted distributable assets of the public charter school must be distributed first to satisfy outstanding payroll obligations for employees of the public charter school, then to creditors of the public charter school, then to public school districts to which students previously attending the closed charter school are returning on a prorated per-pupil basis, and then to the state general fund. If the assets of the public charter school are insufficient to pay all obligations, the prioritization of the distribution of assets may be determined by a court of law.

Section 11. Public charter school operation and autonomy. (1) (a) A public charter school must be a public education organization.

(b) A public charter school is subject to all federal laws and authorities as provided in [sections 1 through 14] or arranged by charter contract with the board of public education consistent with applicable laws, rules, and regulations.

(c) Except as provided in [sections 1 through 14] and in the public charter school's charter contract, a public charter school is subject to the provisions of Title 20 and any state or local rule, regulation, policy, or procedure relating to noncharter public schools within the located school district.

(d) A single governing board may hold one or more charter contracts. A charter contract may consist of one or more schools, to the extent approved by the board of public education and consistent with applicable law. Each public charter school that is part of a charter school district must be under the supervision and control of the governing board of the charter school district.

(2) A public charter school district or public charter school may not be created within the geographical boundaries of a third-class elementary district, as defined in 20-6-201, or a third-class high school district, as defined in 20-6-301, unless the applicant is the local school board.

(3) The governing board of a public charter school shall function as a local educational agency. A public charter school is responsible for meeting the requirements of a local educational agency under applicable federal, state, and local laws, including those relating to special education.

(4) The governing board of a public charter school is responsible for special education at the school, including identification and service provisions, and is responsible for meeting the needs of enrolled students with disabilities.

(5) The governing board of a public charter school district has all the powers necessary for carrying out the terms of its charter contract, including the following powers:

(a) to receive and disburse funds for school purposes;

(b) to secure appropriate insurance and to enter into contracts and leases, free from prevailing wage laws;

(c) to incur debt in reasonable anticipation of the receipt of public or private funds;

(d) to pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(e) to solicit and accept gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;

(f) to acquire real property, for use as its facility or facilities, from public or private sources; and

(g) to sue and be sued in its own name.

(6) (a) A public charter school may not engage in any sectarian practices in its educational program, admissions policies, employment policies or practices, or operations.

(b) The powers, obligations, and responsibilities set forth in the charter contract may not be delegated or assigned by either party except as otherwise specifically provided in [sections 1 through 14].

(7) (a) A public charter school is subject to the same civil rights, health, and safety requirements applicable to other public schools in the state except as otherwise specifically provided in [sections 1 through 14].

(b) The governing board shall establish graduation requirements and may award degrees and issue diplomas.

(c) A governing board is subject to and shall comply with state open meeting and public records laws pursuant to Title 2, chapters 3 and 6.

(d) A public charter school shall establish purchasing procedures that include a competitive bidding process for purchases or contracts exceeding $80,000.

(8) (a) Employees in public charter schools have the same rights and privileges as other public school employees except as otherwise provided in [sections 1 through 14].

(b) Teachers and other school personnel, as well as governing board members, are subject to criminal history record checks and fingerprinting requirements.

(c) Public charter school employees may not be required to be members of any existing collective bargaining agreement between a school district and its employees. However, a public charter school may not interfere with laws and other applicable rules protecting the rights of employees to organize and to be free from discrimination.

Section 12. Funding for public charter schools. (1) It is the intent of the legislature that a public charter school receive operational funding on a per-pupil basis that is equitable with the per-pupil funding of the located school district.

(2) (a) For budgeting and funding purposes, when a public charter school is operated by a local school board, a public charter school must be considered a separate budget unit of the located school district, must have its ANB calculated separately from other budget units of the district, and must receive a basic entitlement calculated separately from other budget units of the district when its ANB is greater than:

(i) 70 for an elementary school or program;

(ii) 20 for a middle school or program; or

(iii) 40 for a high school or program.

(b) When a public charter school district exists, funding of the public charter school district must be distributed as BASE aid, except as provided in subsection (2)(c), at 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. The total amount of funding received by a public charter school district under this subsection (2)(b) is both the minimum amount and the maximum amount of public funding for the public charter school district.

(c) A public charter school district is not eligible for a basic entitlement unless its ANB is greater than:

(i) 70 for an elementary school or program;

(ii) 20 for a middle school or program; or

(iii) 40 for a high school or program.

(3) Students attending a public charter school governed by a local school board who are not residents of the located school district generate funding in the same manner as other nonresident students attending a school of the located district under an out-of-district attendance agreement pursuant to Title 20, chapter 5, part 3;

(4) A public charter school district is prohibited from charging tuition and fees.

(5) For a public charter school that is not governed by the local school board, the county treasurer of the county in which a public charter school is located shall establish funds for the public charter school separate from the funds of the located school district.

(6) The governing board of a public charter school shall report annually on the financial activities of the public charter school in the manner prescribed in 20-9-213(6).

(7) A public charter school district may obligate the public charter school district to indebtedness and is solely responsible for those debts. A public charter school district is not responsible for any debt service obligations that exist in the located school district.

(8) Nothing in [sections 1 through 14] may be construed to prohibit any person or organization from providing funding or other assistance for the establishment or operation of a public charter school. The governing board of a public charter school is authorized to accept gifts or donations of any kind made to the public charter school and to expend or use the gifts or donations in accordance with the conditions prescribed by the donor. A gift or donation may not be accepted if the gift or donation is subject to a condition that is contrary to any provision of law or term of the charter contract.

(9) Money received by a public charter school from any source and remaining in the public charter school's accounts at the end of a budget year must remain in the public charter school's accounts for use by the public charter school in subsequent years.

Section 13. Public charter school access to district facilities and land. (1) A public charter school district has a right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or an unused portion of a public school facility or property within the located school district.

(2) A public charter school district may negotiate and contract at or below fair market value with a school district, the governing body of a college or university or community college, or any other public entity or for-profit or nonprofit private entity for the use of a facility for a school building.

(3) All applicable laws governing the sale or disposition of property of a school district under 20-6-604 apply to this section.

Section 14. Public charter school account. (1) There is a public charter school account in the state special revenue fund provided for in 17-2-102 and administered by the board of public education. The purpose of the account is for the receipt and expenditure of gifts, grants, legacies, devises, and donations given specifically to support the creation and operation of public charter schools created under [sections 1 through 14].

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying public charter schools as determined by the board of public education. Money in the account is derived from a private nonstate source and is payable by the board of public education without an appropriation pursuant to 17-8-101.

(3) A gift or donation made directly to a specific public charter school or schools is not prohibited by this section.

Section 15. Transition. The legislature intends that the board of public education prepare to solicit public charter school proposals so that public charter schools may be operational for the school year beginning July 1, 2024.

Section 16. Codification instruction. [Sections 1 through 14] are intended to be codified as a new part in Title 20, chapter 6, and the provisions of Title 20, chapter 6, apply to [sections 1 through 14].

Section 17. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 511

[HB 556]

AN ACT GENERALLY REVISING DAY CARE LAWS; EXCLUDING A PRIVATE RESIDENCE IN WHICH CARE IS PROVIDED FOR SIX OR FEWER CHILDREN AND IN WHICH CERTAIN PAYMENTS ARE NOT RECEIVED FROM THE REQUIREMENTS TO OBTAIN A FAMILY DAY-CARE HOME REGISTRATION CERTIFICATE; AND AMENDING SECTION 52-2-721, MCA.

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

Section 1. Section 52-2-721, MCA, is amended to read:

"**52-2-721. License required -- registration required -- term of license or registration certificate -- no fee charged.** (1) ~~A~~ *Except as provided in subsection (7), a* person, group of persons, or corporation may not:

(a) establish or maintain a day-care center for children, in which day care is provided on a regular basis, unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate must contain the ages and numbers of children for whom day care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) The department:

(a) may issue a license or registration certificate that remains in effect for a period not to exceed 3 years; and

(b) may not charge a fee to issue a license or registration certificate.

(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies on the licensing criteria and implementing guidelines that are provided in department rule.

(6) The department may issue a license to a day-care center in which day care is provided on an irregular basis if the person operating the center chooses to apply for licensure.

(7) A person who provides day care in a private residence for six or fewer children is not required to obtain a family day-care registration certificate and is exempt from the requirements of this part if that person does not receive payments as provided in 52-2-713."

Approved May 18, 2023

CHAPTER NO. 512

[HB 561]

AN ACT REVISING TIMELINES AND REQUIREMENTS TO REVIEW WATER DISCHARGE PERMITS; AMENDING SECTION 75-5-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 75-5-403, MCA, is amended to read:

"**75-5-403. Denial*, issuance,* or modification of permit -- time for review of permit application *and hearing*.** (1) The department shall review for completeness all applications for new permits within 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all major deficiency issues, based on the information submitted. The department and the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) *(a)* If the department denies an application for a permit*, issues a permit,* or modifies a permit, the department shall give written notice of its action to the applicant or holder. ~~and the~~ *Within 30 days of the department's decision, the* applicant or holder may request a hearing before the board~~, in the manner stated in 75-5-611~~, for the purpose of petitioning the board to reverse or modify the action of the department. *The contested case provisions of the Montana Administrative Procedure Act pursuant to Title 2, chapter 4, apply to hearings under this section.*

(b) ~~The~~ *Unless the deadline is waived by the applicant or holder and except as provided in subsection (2)(c), the* hearing must be held within ~~30~~ *90* days after receipt of written request. ~~After~~ *Except as provided in subsection (2)(c), within 120 days of* the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action of the board.

(c) The board may extend a deadline for good cause.

(d) An applicant or holder may appeal the board's final decision to a district court.

(3) (a) Subject to subsection (3)(b) and within 30 days of the agency's final decision, a person who provided public comment on the permit may file an appeal in a district court.

(b) The appeal is limited to the issues raised by the person during the public comment period or the terms, conditions, and issues within the final permit decision that were not contained in the draft permit.

(c) This section provides the exclusive means for an appeal of a permit decision under this chapter.

(4) (a) Filing an appeal in a district court does not stay the permit.

(b) Subsection (4)(a) does not supersede department rules allowing permit provisions contested by the applicants or holders to be stayed, pending final action by the board."

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

Section 3. Applicability. [This act] applies to permits issued, modified, or denied on or after [the effective date of this act].

Approved May 18, 2023

CHAPTER NO. 513

[HB 562]

AN ACT AUTHORIZING THE ESTABLISHMENT OF COMMUNITY CHOICE SCHOOLS AS A MEANS OF PROVIDING ADDITIONAL EDUCATIONAL OPPORTUNITIES; PROVIDING LEGISLATIVE FINDINGS AND INTENT; PROVIDING DEFINITIONS; ESTABLISHING A COMMUNITY CHOICE SCHOOL COMMISSION; ESTABLISHING CHOICE SCHOOL AUTHORIZERS FOR OVERSEEING CHOICE SCHOOLS; PROVIDING AN OVERSIGHT FEE FOR CHOICE SCHOOL AUTHORIZERS; PROVIDING FOR THE CREATION, RENEWAL, REVOCATION, AND CLOSURE OF CHOICE SCHOOLS; PROVIDING FOR PERFORMANCE MEASURES FOR CHOICE SCHOOLS; EXEMPTING CHOICE SCHOOL TEACHERS FROM STATE CERTIFICATION REQUIREMENTS; PROVIDING FOR FUNDING OF CHOICE SCHOOLS; ESTABLISHING CONDITIONS FOR CHOICE SCHOOL ACCESS TO SCHOOL DISTRICT FACILITIES AND LAND; ESTABLISHING THE COMMUNITY CHOICE SCHOOL ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 17] may be cited as the "Community Choice Schools Act".

Section 2. Community choice schools -- legislative findings and intent. (1) The legislature finds, pursuant to the authority and duties provided in Article X, section 1(3), of the Montana constitution, that:

(a) parents desire education options for their children;

(b) expanding educational opportunities for K-12 education within the state is a valid public purpose; and

(c) creating options that empower parents, encourage students to develop their full educational potential, provide a variety of professional opportunities for teachers, and encourage educational entrepreneurship is vital to the economic competitiveness of the state.

(2) It is the legislature's intent, pursuant to the authority and duties provided in Article X, section 1(3), of the Montana constitution, to create other public educational programs and institutions through choice schools. The purposes are to:

(a) enable parents to make decisions on how best to educate their children;

(b) provide other public educational opportunities for all students, especially those at risk of academic failure or academic disengagement;

(c) encourage the use of different models of teaching, governing, scheduling, and providing instruction to meet a wide variety of student and community needs; and

(d) advance Montana's commitment to the preservation of American Indian cultural identity, pursuant to Article X, section 1(2), of the Montana constitution, and to eliminate the American Indian achievement gap by encouraging participation in the choice school program by students, parents, and school districts in Indian country.

Section 3. Definitions. As used in [sections 1 through 17], the following definitions apply:

(1) "Applicant" means a person or group that submits a proposal for a community choice school to an authorizer.

(2) "Authorizer" means the commission or a local school board approved as an authorizer by the commission.

(3) "Charter contract" means a fixed-term, renewable contract between a community choice school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(4) "Commission" means the community choice school commission provided for in [section 4].

(5) "Community choice school" or "choice school" means a public school that:

(a) has autonomy over decisions, including but not limited to matters concerning finance, board governance, personnel, scheduling, curriculum, and instruction;

(b) is governed by a governing board;

(c) is established and operated under the terms of a charter contract between the school's governing board and its authorizer;

(d) is a school in which parents choose to enroll their children;

(e) is a school that admits students based on capacity and then on the basis of a lottery if more students apply for admission than can be accommodated;

(f) provides a program of education that may include any or all grades from kindergarten through grade 12 and vocational education programs;

(g) operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(h) operates under the oversight of its authorizer in accordance with its charter contract; and

(i) establishes graduation requirements and has authority to award degrees and issue diplomas.

(6) "Education service provider" means a for-profit education management organization, nonprofit education management organization, school design provider, or other partner entity with which a community choice school intends to contract for educational design, implementation, or comprehensive management.

(7) "Governing board" means an independent volunteer board of trustees of a community choice school that is a party to the charter contract with the authorizer.

(8) "Local school board" means a traditional school district board of trustees exercising management and control over a traditional local school district pursuant to the laws of the state.

(9) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.

(10) "Resident school district" means the public school district in which a student resides.

(11) "Student" means a child who is eligible for attendance in a public school in the state.

(12) "Traditional public school" means a traditional public school that is under the direct management, governance, and control of a local school board or the state.

(13) "Virtual community choice school" means a community choice school headquartered in Montana that offers educational services predominantly through an online program.

Section 4. Community choice school commission -- appointments. (1) There is an autonomous state community choice school commission with

statewide authorizing jurisdiction and authority. The commission is attached to the board of public education for administrative purposes, as prescribed in 2-15-121(2), except as provided in this section, and is under the general supervision of the board of public education as set forth in this section.

(2) The commission is responsible for approving authorizers for choice schools throughout the state.

(3) The commission consists of seven members who are appointed as follows:

(a) two members appointed by the governor;

(b) one member appointed by the superintendent of public instruction

(c) one member appointed by the president of the senate;

(d) one member appointed by the speaker of the house;

(e) one member appointed by the minority leader of the senate; and

(f) one member appointed by the minority leader of the house of representatives.

(4) Members appointed to the commission must collectively possess substantial experience and expertise in board governance, business, finance, education, management, and philanthropy. All members of the commission must have a demonstrated understanding of and commitment to choice schools as a strategy for strengthening public education.

(5) (a) Initial appointments to the commission must be for staggered terms as follows:

(i) 4-year terms for the appointees of the governor, one of whom must be designated by the governor as the initial presiding officer of the commission for 2 years;

(ii) 3-year terms for the appointees of the superintendent of public instruction and the minority leaders of the senate and house of representatives; and

(iii) 2-year terms for the appointees of the president of the senate and speaker of the house.

(b) All terms after the initial term must be for 3 years. Appointment to the initial terms must be made no later than 60 days following [the effective date of this act]. If any of the appointing authorities fails to make the appointments, the remaining appointing authorities may make the remaining appointments.

(6) Each member of the commission is entitled to reimbursement for expenses upon approval of the treasurer of the commission as provided in the commission's bylaws.

(7) A member of the commission may be removed by a majority vote of the commission for any cause that renders the member unable or unfit to discharge the duties of the office, including but not limited to failure to approve an authorizer or a choice school without just cause and interference with the functions of the commission as set forth in [sections 1 through 17]. Whenever a vacancy on the commission exists, the original appointing authority shall appoint a member for the remaining portion of the term consistent with the requirements of subsections (4) and (5).

(8) The commission is authorized to receive and expend gifts and donations of any kind from any private entity. The gifts and donations may not require conditions that do not comport with the purposes of [sections 1 through 17]. Gifts and donations under this subsection must be deposited in the community choice school account pursuant to [section 17] and may be used by the commission for commission operations or distributed to choice schools at the discretion of the commission.

(9) The commission may hire staff for the commission. Support staff may be provided by the board of public education for centralized services, including payroll, human resources, accounting, information technology, or other

services, if those services are determined by the commission and the board to be more efficiently provided by the board.

(10) The commission shall convene and approve bylaws and officers within 180 days of [the effective date of this act].

(11) All commission meetings are open to the public pursuant to Article II, section 9, of the Montana constitution and 2-3-203.

(12) By August 1 of each year, the commission shall annually report to the state board of public education the academic performance and financial reports of each choice school authorized within the state.

Section 5. Authorizers. (1) The state community choice school commission created under [section 4] may authorize choice schools in the state. The commission shall perform the functions of choice school authorizers under [sections 1 through 17].

(2) (a) A local school board may apply to the commission for authorizing authority within the boundaries of the traditional school district overseen by the local school board.

(b) If the commission determines that the local school board fulfills the requirements of an authorizer, the commission shall, within 60 days of receipt of a local school board's application, approve the local school board as an authorizer.

(c) On approval, the commission shall register the local school board and shall provide the local school board with a letter confirming its approval as an authorizer.

(3) (a) The commission shall establish the annual application and approval process, including cycles and deadlines during the fiscal year, for local school boards to apply for authorizing authority as set forth in this section.

(b) By March 1 of each year, the commission shall make available information and guidelines for local school boards concerning the opportunity to apply for authorizing authority under [sections 1 through 17].

(c) Each interested local school board shall submit an application that clearly explains or presents the following elements in a format to be established by the commission:

(i) written notification of intent to serve as a choice school authorizer in accordance with [sections 1 through 17];

(ii) an explanation of the local school board's strategic vision for authorizing;

(iii) a plan supporting the local school board's strategic vision and an explanation of the local school board's budget and personnel capacity and commitment to execute the duties of choice school authorizing in accordance with [sections 1 through 17];

(iv) a draft or preliminary outline of a request for proposal that will solicit choice school applicants in accordance with [section 9];

(v) a description or outline of the performance framework the local school board will use to guide the establishment of a charter contract and for ongoing oversight and evaluation of choice schools consistent with the requirements of [sections 1 through 17];

(vi) a draft of the local school board's renewal, revocation, nonrenewal, and school closure processes consistent with [sections 12 and 13];

(vii) a statement of assurance that the local school board commits to serving as a choice school authorizer in fulfillment of the expectations, spirit, and intent of [sections 1 through 17] and will fully participate in any authorizer training provided or required by the commission; and

(viii) a statement of assurance that the local school board will be accountable and transparent in all matters concerning authorizing practices, decisions, and expenditures.

(4) (a) Within 60 days of receipt of the application, the commission shall determine whether to approve an application based on a review of the documentation provided in subsection (5) and the quality of the application. The commission shall provide a letter to the local school board either confirming or denying acceptance as an authorizer.

(b) Within 30 days of approval of an application for choice school authorizing, the commission and the approved authorizer shall execute a renewable authorizing contract. The initial authorizing contract term is 6 years.

(5) A local school board may not engage in authorizing functions without a fully executed authorizing contract.

(6) When approved by the commission, the local school board continues as an authorizer from year to year during the term of the contract as long as the local school board fulfills all authorizing duties and expectations set forth in [sections 1 through 17] and remains an authorizer in good standing with the commission.

Section 6. Authorizer responsibilities. (1) In accordance with [sections 1 through 17], an authorizer is responsible for executing the following essential powers and duties:

(a) soliciting and evaluating choice school proposals;

(b) approving choice school proposals that meet identified educational needs and promote a diversity of educational choices, including but not limited to:

(i) creating more schools with high standards for pupil performance;

(ii) closing achievement gaps between high-performing and low-performing groups of public school students;

(iii) increasing educational opportunities within the public education system;

(iv) providing alternative learning environments for students who are not thriving in traditional school settings;

(v) addressing the dropout rate;

(vi) creating new professional opportunities for teachers, leaders, and other school personnel;

(vii) encouraging the use of innovative models of teaching, delivering content, and providing other aspects of K-12 education; and

(viii) providing students, parents, community members, and other local and philanthropic entities with expanded opportunities for involvement in the public education system;

(c) declining to approve inadequate choice school proposals;

(d) negotiating and executing sound charter contracts with each approved choice school;

(e) monitoring, in accordance with charter contract terms, the performance and legal compliance of choice schools; and

(f) determining whether each charter contract merits renewal, nonrenewal, or revocation.

(2) An authorizer may delegate its duties to its officers, employees, and contractors.

(3) Regulation of choice schools by authorizers is limited to the powers and duties described in [sections 1 through 17], consistent with the intent of [sections 1 through 17].

(4) An authorizer shall develop, carry out, and maintain authorizing policies and practices consistent with nationally recognized principles and standards for authorizing in all major areas of authorizing responsibility, including:

(a) organizational capacity and infrastructure;

(b) soliciting and evaluating choice school proposals;

(c) performance contracting;

(d) ongoing community choice school oversight and evaluation; and

(e) charter contract renewal decisionmaking.

(5) Evidence of material or persistent failure to carry out the duties enumerated in this section constitutes grounds for rescission of authorizing powers by the commission.

(6) Each authorizer shall submit to the commission an annual report summarizing:

(a) the authorizer's strategic vision for authorizing and progress toward achieving that vision;

(b) the academic and financial performance of all operating choice schools overseen by the authorizer, according to the performance expectations for choice schools set forth in [sections 1 through 17];

(c) the status of the authorizer's choice school portfolio, identifying all choice schools approved but not yet open, operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;

(d) the authorizing functions provided by the authorizer to the choice schools under its direction, including the authorizer's operating costs and expenses detailed in annual audited financial statements that conform with generally accepted accounting principles; and

(e) the services purchased from the authorizer by a choice school under the authorizer's direction, including an itemized accounting of the actual costs of these services, as required in [section 7].

(7) An employee, trustee, agent, or representative of an authorizer may not simultaneously serve as an employee, trustee, agent, representative, vendor, or contractor of a community choice school authorized by that entity.

(8) A government unit or other entity, other than those expressly granted authority under [section 5], may not assume any authorizing function or duty in any form unless expressly allowed by law.

Section 7. Duties of commission -- oversight of authorizers. (1) (a) The commission shall establish a statewide formula for authorizer funding to be applied uniformly to every authorizer in the state. Authorizer funding is financed through an oversight fee.

(b) The oversight fee must be calculated as a uniform percentage of the state funding allocated to each choice school and is to be paid from the choice school's budget share of the per-pupil funding, not to exceed 3% of each community choice school's state funding in a single school year.

(c) The commission may establish a sliding scale for authorizer funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold after a certain number of years of authorizing, after a certain number of schools have been authorized, or for other reasons determined at the discretion of the commission.

(d) An authorizer's oversight fee may not include any costs incurred in delivering services that a choice school may purchase at its discretion from the authorizer. The authorizer shall use the funding provided under this section exclusively for the purpose of fulfilling authorizing obligations in accordance with [sections 1 through 17].

(2) The commission is responsible for overseeing the performance and effectiveness of all authorizers established under [sections 1 through 17].

(3) The commission shall annually review the effectiveness of the formula it established for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of [sections 1 through 17].

(4) By October 15 of each year, the commission shall communicate to every authorizer the requirements for the format, content, and submission of the annual report.

(5) Persistently unsatisfactory performance of an authorizer's portfolio of community choice schools, a pattern of well-founded complaints about the authorizer or its choice schools, or other objective circumstances may trigger a special review by the commission.

(6) In reviewing or evaluating the performance of authorizers, the commission shall apply nationally recognized principles and standards for authorizing.

(7) If at any time the commission finds that an authorizer is not in compliance with an existing charter contract, its authorizing contract with the commission, or the requirements of authorizers under [sections 1 through 17], the commission shall notify the authorizer in writing of the identified problems and shall provide the authorizer reasonable opportunity to respond and remedy the problems.

(8) If an authorizer fails to respond and remedy the problems identified by the commission, the commission shall notify the authorizer, within a reasonable amount of time under the circumstances, that it intends to revoke the authorizer's authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.

(9) In the event of revocation of an authorizer's authority, the commission shall manage the timely and orderly transfer of each charter contract held by that authorizer to another authorizer in the state, with the mutual agreement of each affected choice school and proposed new authorizer. The new authorizer shall assume the existing charter contract for the remainder of the charter contract term.

(10) On or before December 1 of each year, beginning in the first year that choice schools have been in operation for a full school year, the commission shall issue to the board of public education, the education interim committee, and the public an annual report on the state's community choice schools that includes data from the annual reports submitted by every authorizer, as well as any additional relevant data compiled by the commission, for the school year ending in the preceding calendar year. The annual report must include:

(a) a comparison of the performance of choice school students with the performance of the comparable grade ranges of the choice school's students' resident district schools; and

(b) the commission's assessment of the successes, challenges, and areas for improvement in meeting the purposes of [sections 1 through 17], including the commission's assessment of the sufficiency of funding for choice schools, the efficacy of the commission's formula for authorizer funding, and any suggested changes in state law or policy necessary to strengthen the state's community choice schools.

Section 8. Purchase of services by choice school. (1) With the exception of oversight services as required by [section 7], a community choice school may not be required to purchase services from the choice school's authorizer as an express or implied condition of choice school approval or of executing a charter contract.

(2) A choice school may choose to purchase services from its authorizer. In that event, the choice school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the choice school. An authorizer may not charge more than market rates for services provided to a choice school.

(3) A choice school may purchase goods and services from for-profit providers for operational and ancillary purposes.

Section 9. Community choice school proposal process -- request for proposal. (1) To solicit, encourage, and guide the development of choice schools, every authorizer operating under [sections 1 through 17] shall issue and broadly publicize a request for proposal by June 1 of each year. The content and dissemination of the request for proposal must be consistent with the purposes and requirements of [sections 1 through 17].

(2) Each authorizer's request for proposal must present the authorizer's strategic vision for authorizing, including a clear statement of any preferences the authorizer wishes to grant to proposals that help at-risk students.

(3) A request for proposal must include or otherwise direct applicants to the performance framework that the authorizer has developed for choice school oversight and evaluation in accordance with [section 7].

(4) A request for proposal must include the criteria that will guide the authorizer's decision to approve or deny a choice school proposal.

(5) A request for proposal must include clear and detailed questions designed to gauge an applicant's capacity to establish and operate a successful choice school, as well as guidelines concerning the format and content of an applicant's response to the request for proposal.

(6) A request for proposal must require applicants to describe thoroughly the following essential elements of their proposed choice school proposal:

(a) an executive summary;

(b) the mission and vision of the proposed choice school, including identification of the targeted student population and the community the school hopes to serve;

(c) the location or geographic area proposed for the choice school;

(d) the grades to be served each year for the full term of the charter contract;

(e) minimum, planned, and maximum enrollment each year for the term of the charter contract;

(f) evidence of need and community support for the proposed choice school;

(g) background information on the founding governing board members and, if identified, the proposed school leadership and management team;

(h) the proposed choice school's proposed calendar and sample daily schedule;

(i) a description of the academic program, including identification of the planned standardized assessment to formally measure student achievement on an annual basis;

(j) a description of the proposed choice school's instructional design, including the type of learning environment, class size and structure, curriculum overview, and teaching methods;

(k) the proposed choice school's plans for identifying and successfully serving students with disabilities, students who are English language learners, students who are academically challenged, and gifted students, including but not limited to compliance with applicable laws and regulations;

(l) a description of cocurricular or extracurricular programs, if any, and how the programs will be funded and delivered;

(m) plans and timelines for student recruitment and enrollment, including lottery procedures;

(n) the proposed choice school's student discipline policies, including those for special education students;

(o) an organizational chart that clearly presents the proposed choice school's organizational structure, including lines of authority and reporting between the governing board, staff, related bodies such as advisory bodies or

parent and teacher councils, and any external organizations that may play a role in managing the school;

(p) a clear description of the roles and responsibilities for the governing board, the proposed choice school's leadership and management team, and other entities shown in the organizational chart;

(q) a staffing chart for the proposed choice school's first year and a staffing plan for the term of the charter contract;

(r) plans for recruiting and developing school leadership and staff;

(s) the proposed choice school's leadership and teacher employment policies, including performance evaluation plans;

(t) proposed governing bylaws;

(u) explanations of any partnerships or contractual relationships central to the proposed choice school's operations or mission;

(v) the proposed choice school's plans for providing transportation, food service, and all other significant operational or ancillary services, if any;

(w) opportunities and expectations for parent involvement;

(x) a detailed school startup plan identifying tasks, timelines, and responsible individuals;

(y) a description of the proposed choice school's financial plan and policies, including financial controls and audit requirements;

(z) a description of the insurance coverage the proposed choice school will obtain;

(aa) startup and 5-year budgets with clearly stated assumptions;

(bb) startup and first-year cash flow projections with clearly stated assumptions;

(cc) evidence of anticipated fundraising contributions, if claimed in the proposal; and

(dd) a sound facilities plan, including backup or contingency plans, if appropriate.

(7) In the case of a proposal to establish a choice school by converting an existing traditional public school to choice school status, a request for proposal must also require the applicants to demonstrate support for the proposed choice school conversion by a petition signed by a majority of teachers or a majority of the local school board and a petition signed by a majority of parents of students in the existing traditional public school.

(8) In the case of a proposal to establish a virtual choice school, a request for proposal must additionally require the applicants to describe the proposed school's system of course credits and how the school will:

(a) monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;

(b) monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework; and

(c) conduct parent-teacher conferences.

(9) In the case of a proposed choice school that intends to contract with an education service provider for substantial educational services, management services, or both, a request for proposal must additionally require the applicants to:

(a) provide evidence of the education service provider's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(b) provide documentation setting forth:

(i) the proposed duration of the service contract;

(ii) the roles and responsibilities of the governing board, the school staff, and the education service provider;

(iii) the scope of services and resources to be provided by the education service provider;

(iv) performance evaluation measures and timelines;

(v) a compensation structure, including clear identification of all fees to be paid to the education service provider;

(vi) methods of contract oversight and enforcement;

(vii) investment disclosure; and

(viii) conditions for renewal and termination of the contract; and

(c) disclose and explain any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

(10) In the case of a choice school proposal from an applicant that currently operates one or more schools in any state or nation, a request for proposal must additionally require the applicant to provide evidence of past performance and current capacity for growth.

(11) If a choice school proposal does not contain the elements required in this section, the authorizer may consider the proposal incomplete and return the proposal to the applicant without following the process described in subsection (12).

(12) In reviewing and evaluating choice school proposals, authorizers shall employ procedures, practices, and criteria consistent with nationally recognized principles and standards for authorizing. The proposal review process must include thorough evaluation of each written choice school proposal, an in-person interview with the applicant group, and an opportunity in a public forum for local residents to learn about and provide input on each proposal.

(13) In deciding whether to approve choice school proposals, authorizers shall:

(a) grant approval only to applicants that have demonstrated competence in each element of the authorizer's published approval criteria and are likely to open and operate a successful choice school;

(b) base decisions on documented evidence collected through the proposal review process; and

(c) follow proposal review and approval policies and practices that are transparent and are based on merit and avoid conflicts of interest or any appearance of conflict.

(14) (a) The authorizer shall approve or deny a choice school proposal within 60 days after the filing of the proposal, except that the commission has up to 120 days if more than three proposals have been submitted to the commission within 30 days. The commission shall notify the applicant of the expected timeline for approval or denial.

(b) The authorizer shall adopt by resolution all choice school proposal approval or denial decisions in an open meeting of the authorizer's governing body.

(c) An approval decision may include, if appropriate, reasonable conditions that the applicant must meet before a charter contract may be executed pursuant to [section 10].

(d) For any choice school proposal denial, the authorizer shall clearly state for the public record the reasons for denial. A denied applicant may subsequently reapply to that authorizer or apply to any other authorizer in the state.

(e) Within 10 days of taking action to approve or deny a choice school proposal, the authorizer shall report its decision to the commission. The authorizer shall provide a copy of the report to the applicant at the same time that the report is submitted to the commission. The report must include a copy of the resolution of the authorizer's governing body setting forth the action taken and reasons for the decision and providing assurances of compliance with all of the procedural requirements and proposal elements set forth in this section.

(15) An applicant may submit a proposal for a particular choice school to only one authorizer at a time.

Section 10. Charter contract -- terms. (1) An initial charter contract must be granted for a term of 5 operating years, commencing on the community choice school's first day of operation. An approved choice school may delay its opening for 1 school year to plan and prepare for the school's opening. If the school requires an opening delay of more than 1 school year, the school shall request an extension from its authorizer. The authorizer may grant or deny the extension depending on the school's circumstances.

(2) Within 45 days of approval of a choice school proposal, the authorizer and the governing board of the approved choice school shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the choice school will be judged and the administrative relationship between the authorizer and the choice school, including each party's rights and duties.

(3) The performance provisions of the charter contract may be refined or amended by mutual agreement after the choice school is operating and has collected baseline achievement data for its enrolled students.

(4) The charter contract for a full-time virtual community choice school must include a description and agreement regarding the methods by which the school will:

(a) monitor and verify full-time student enrollment, student participation in a full course load, credit accrual, and course completion;

(b) monitor and verify student progress and performance in each course through regular, proctored assessments and submissions of coursework; and

(c) conduct parent-teacher conferences.

(5) The charter contract must be signed by the president of the authorizer's governing body and the president of the choice school's governing board. Within 10 days of executing a charter contract, the authorizer shall submit to the commission written notification of the charter contract execution, including a copy of the executed charter contract and any attachments.

(6) A community choice school may not commence operations without a charter contract executed in accordance with this section and approved in an open meeting of the authorizer's governing body.

(7) Authorizers may establish reasonable pre-opening requirements or conditions to monitor the startup progress of a newly approved choice school to ensure that the school is prepared to open smoothly on the date agreed and to ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening.

Section 11. Enrollment. (1) (a) A community choice school must be open to any student residing in the state.

(b) A school district may not require a student enrolled in the school district to attend a choice school.

(c) A choice school may limit admission to students within a given age group or grade level.

(d) A choice school may be organized for a special emphasis, theme, or concept as stated in the school's proposal.

(e) A choice school shall enroll all students who wish to attend the school unless the number of students exceeds the capacity of a program, class, grade level, or building.

(f) If capacity is insufficient to enroll all students who wish to attend the school, the choice school shall select students through a lottery.

(2) A traditional public school converting to a choice school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

(3) (a) A choice school shall give enrollment preference to students who were enrolled in the choice school the previous school year and to siblings of students already enrolled in the choice school. An enrollment preference for returning students and siblings excludes those students from entering a lottery.

(b) A choice school may give enrollment preference to children of a choice school's employees and governing board, limited to no more than 10% of the school's total student population.

(4) This section does not preclude the formation of a community choice school for the purpose of serving students with disabilities, students of the same gender, students who pose a sufficiently severe disciplinary problem to warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend a school, the choice school shall select students through a lottery.

(5) If a student who was previously enrolled in a choice school enrolls in any other public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the choice school.

(6) A traditional school district shall provide or publicize to parents and the general public information about choice schools as an enrollment option within the district's physical, geographical boundaries to the same extent and through the same means that the district provides and publicizes information about traditional public schools in the district.

(7) An authorizer may not restrict the number of students a choice school may enroll. The capacity of the choice school must be determined annually by its governing board in conjunction with the authorizer and in consideration of the choice school's ability to facilitate the academic success of its students, to achieve the objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the capacity of its facility or site.

(8) If the choice school is the only public school in a town, the choice school must give preference to enrolling pupils residing in the town or within 5 miles of the school if the next closest public school is more than 10 miles away from the student's residence.

Section 12. Community choice school performance and renewal. (1) The performance provisions within the charter contract must be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the authorizer's evaluations of each choice school. The performance framework must include indicators, measures, and metrics for, at a minimum:

(a) student academic proficiency;

(b) student academic growth;

(c) achievement gaps in both proficiency and growth between major student subgroups;

(d) attendance;

(e) recurrent enrollment from year to year;

(f) postsecondary readiness;

(g) financial performance and sustainability; and

(h) governing board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(2) Each choice school, in conjunction with its authorizer, shall set annual performance targets designed to help each school meet applicable federal, state, and authorizer expectations.

(3) (a) The contract performance framework must include rigorous, valid, and reliable indicators proposed by a choice school to evaluate its performance that are consistent with the purposes of [sections 1 through 17].

(b) The authorizer shall collect and analyze data from each choice school it oversees in accordance with the performance framework.

(c) Multiple schools operating under a single charter contract or overseen by a single governing board shall report their performance as separate, individual schools. Each school must be held independently accountable for its performance.

(4) (a) An authorizer shall monitor the performance and legal compliance of the choice schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. Every authorizer has the authority to conduct or require oversight activities that do not unduly inhibit the autonomy granted to choice schools but that enable the authorizer to fulfill its responsibilities under [sections 1 through 17], including conducting appropriate inquiries and investigations consistent with the intent of [sections 1 through 17], and to adhere to the terms of the charter contract. Required oversight activities may not encumber the choice school financially and may be appealed by the choice school through the commission.

(b) Each authorizer shall annually publish and provide as part of its annual report to the commission a performance report for each choice school it oversees, within the performance framework set forth in the charter contract and [section 10]. The authorizer may require each choice school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the performance framework.

(c) In the event that a choice school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the choice school of the perceived problem and provide a reasonable opportunity for the school to remedy the problem.

(d) An authorizer may take appropriate corrective action or exercise sanctions short of revocation in response to apparent deficiencies in choice school performance or legal compliance. The action or sanctions may include, if warranted, requiring a choice school to develop and execute a corrective action plan within a specified timeframe.

(5) (a) A charter contract may be renewed for successive 5-year terms, although the authorizer may vary the term based on the performance, demonstrated capacities, and particular circumstances of each choice school. An authorizer may grant renewal with specific conditions for necessary improvement to a choice school.

(b) No later than June 30 of each year, the authorizer shall issue a choice school performance report and charter renewal application guide to any choice school whose charter contract will expire the following year. The performance report must summarize the choice school's performance record to date, based on the data required by [sections 1 through 17] and the charter contract, and must provide notice of any weaknesses or concerns perceived by the authorizer concerning the choice school that may jeopardize renewal if not promptly

rectified. The choice school shall respond to the performance report and submit any corrections or clarifications within 90 days.

(6) The renewal application guide must, at a minimum, provide an opportunity for the choice school to:

(a) present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;

(b) describe improvements undertaken or planned for the choice school; and

(c) detail the choice school's plans for the next charter contract term.

(7) The renewal application guide must include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, based on the performance framework set forth in the charter contract and consistent with [sections 1 through 17].

(8) (a) No later than February 1 of each year, the governing board of a community choice school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal application guide issued by the authorizer. The authorizer shall rule by resolution on the renewal application no later than 30 days after the filing of the renewal application.

(b) Every authorizer shall, when considering charter contract renewal:

(i) base its decision on evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(ii) ensure that the data used in making renewal decisions is available to the choice school and to the public; and

(iii) provide a public report summarizing the basis for each decision.

Section 13. Charter contract revocation and school closure or charter contract nonrenewal. (1) A charter contract may be subject to nonrenewal or revocation if the authorizer determines that the community choice school:

(a) committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under [sections 1 through 17] or the charter contract and from which the choice school was not exempted;

(b) failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) failed to meet public safety standards; or

(d) failed to meet generally accepted standards of fiscal management.

(2) An authorizer shall develop revocation and nonrenewal processes that:

(a) provide the charter contract holders with timely notification of the prospect of revocation or nonrenewal and of the reasons for the possible closure;

(b) allow the charter contract holders a reasonable amount of time in which to prepare a response;

(c) provide the charter contract holders an opportunity to submit documents and testimony at a hearing to challenge the rationale for the closure recommendation and in support of the continuation of the school;

(d) allow the charter contract holders to be represented by counsel and call witnesses on their behalf;

(e) permit the recording of the proceedings; and

(f) provide for a final determination conveyed in writing to the charter contract holders.

(3) If an authorizer revokes or denies renewal of a charter contract, the authorizer shall clearly state, by resolution of its governing body, the reasons for the revocation or nonrenewal.

(4) Within 10 days of taking action to renew, not renew, or revoke a charter contract, the authorizer shall report to the commission the action taken and at the same time shall provide a copy of the report to the choice school. The report

must include a copy of the resolution of the authorizer's governing body setting forth the action taken and reasons for the decision and providing assurances of compliance with all the requirements set forth in [sections 1 through 17]. The authorizer's decision is appealable to the commission in writing within 30 days of the commission's receipt of the authorizer's report.

(5) (a) Prior to a choice school closure, an authorizer shall develop a choice school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of [sections 1 through 17]. The protocol must specify responsible parties, transition and closure timelines, and a delineation of the respective duties of the choice school and the authorizer.

(b) The authorizer shall oversee the closure and work with the closing choice school to ensure a smooth and orderly closure and transition for students and parents.

(c) In the event of a choice school closure for any reason, the nonrestricted distributable assets of the choice school must be distributed first to satisfy outstanding payroll obligations for employees of the choice school, then to creditors of the choice school, then to resident school districts of students previously attending the closed choice school on a prorated per-pupil basis, and then to the state general fund. If the assets of the choice school are insufficient to pay all obligations, the prioritization of the distribution of assets may be determined by a court of law.

(d) If a closing choice school was converted from an existing traditional public school, the closing choice school is not responsible for any financial obligation or debt of the previously existing traditional public school unless the choice school assumed the debt or obligation at the time of conversion.

(6) Transfer of a charter contract, and of oversight of that choice school from one authorizer to another before the expiration of the charter contract term, may occur only if the authorizer violates the provisions of [section 6] or by special petition to the commission by a choice school or its authorizer. The commission shall consider a petition for transfer on a case-by-case basis and may grant transfer requests in response to special circumstances and to evidence that the transfer would serve the best interests of the community choice school's students.

Section 14. Community choice school operation and autonomy. (1) (a) A community choice school must be a nonprofit education organization.

(b) A choice school is subject to all federal laws and authorities as provided in [sections 1 through 17] or arranged by charter contract with the choice school's authorizer consistent with applicable laws, rules, and regulations.

(c) Except as provided in [sections 1 through 17], a choice school is not subject to the provisions of Title 20 or any state or local rule, regulation, policy, or procedure relating to traditional public schools within an applicable traditional local school district.

(d) For the purposes of the public employee retirement system and the teacher retirement system under Title 19, choice schools are not "employers" and choice school employees are not "employees" as those terms are defined in 19-2-303 and 19-20-101.

(e) A single governing board may hold one or more charter contracts. A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each choice school that is part of a charter contract is separate and distinct from any other choice school.

(f) The founding governing board of a choice school may apply for and operate with a charter contract for a period up to 3 years before holding an

election. The founding board shall ensure an elected governing board is in place within 3 years of the school commencing operations. The governing board must be elected by a process outlined in the choice school bylaws. The election process must include the following requirements:

(i) the qualified electors consist of parents and guardians of students enrolled in the school and the choice school's employees. The qualified electors shall nominate and vote for candidates for the governing board on a cycle outlined in the choice school's bylaws.

(ii) if the number of nominees is equal to the number of vacancies, no election is required;

(iii) if the number of nominees is greater than the number of vacancies, the election must be decided by the qualified electors as part of the next regular school election; and

(iv) the terms of board members must be staggered to ensure continuity on the governing board.

(2) A choice school may only be created within the geographical boundaries of a third-class elementary district, as described in 20-6-201, or a third-class high school district, as described in 20-6-301, if:

(a) the choice school is being converted from an existing public school;

(b) the traditional third-class school district elects to establish a community choice school;

(c) the traditional third-class district elects to convert a grade or grades to a choice school from an existing school;

(d) the choice school is a tribal choice school;

(e) the choice school is a virtual community choice school; or

(f) the governing board of the choice school has received approval, by majority vote, of a memorandum of understanding from the third-class school district's board of trustees.

(3) Each community choice school shall function as a local educational agency. A choice school is responsible for meeting the requirements of a local educational agency under applicable federal, state, and local laws, including those relating to special education.

(4) For purposes of special education, a community choice school shall serve as its own local education agency. A choice school is responsible for special education services at the school, including identification and service provisions, and is responsible for meeting the needs of enrolled students with disabilities.

(5) A choice school has all the powers necessary for carrying out the terms of its charter contract, including the following powers:

(a) to receive and disburse funds for school purposes;

(b) to secure appropriate insurance and to enter into contracts and leases, free from prevailing wage laws;

(c) to contract with an education service provider for the management and operation of the choice school only if the school's governing board retains oversight authority over the school;

(d) to incur debt in reasonable anticipation of the receipt of public or private funds;

(e) to pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(f) to solicit and accept gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;

(g) to acquire real property, for use as its facility or facilities, from public or private sources; and

(h) to sue and be sued in its own name.

(6) (a) A choice school may not engage in any sectarian practices in its educational program, admissions policies, employment policies or practices, or operations.

(b) The powers, obligations, and responsibilities set forth in the charter contract may not be delegated or assigned by either party except as otherwise specifically provided in [sections 1 through 17].

(7) (a) A choice school is subject to the same federal civil rights, health, and safety requirements applicable to other public schools in the state except as otherwise specifically provided in [sections 1 through 17].

(b) The governing board shall establish graduation requirements and may award degrees and issue diplomas.

(c) A governing board is subject to and shall comply with state open meeting and public records laws pursuant to Title 2, chapters 3 and 6.

(d) A choice school shall establish purchasing procedures that include a competitive bidding process for purchases or contracts exceeding $80,000.

(8) (a) A community choice school's teachers are exempt from state teacher certification requirements provided in Title 20, chapter 4.

(b) Employees in choice schools have the same rights and privileges as other public school employees except as otherwise provided in [sections 1 through 17].

(c) Teachers and other school personnel, as well as governing board members, are subject to criminal history record checks and fingerprinting requirements.

(d) Community choice school employees may not be required to be members of any existing collective bargaining agreement between a school district and its employees. However, a choice school may not interfere with laws and other applicable rules protecting the rights of employees to organize and to be free from discrimination.

(9) A choice school's location is determined exclusively by its governing board and only encompasses the property lines of where the school exists as a tenant, guest, or owner of the property. The community choice school is a separate public education entity authorized by and under control of the state of Montana. A choice school is separate from the traditional local school district in which it is physically located and is exempt from Title 20 except as provided in [sections 1 through 17].

Section 15. Funding of choice schools. (1) It is the intent of the legislature that a choice school receive operational funding on a per-pupil basis that is equitable with the per-pupil funding within the general fund of a choice school student's resident school district.

(2) (a) A choice school student's enrollment must be included in the student's resident district enrollment counts for ANB purposes only. By March 1, prior to a choice school's first year of operation, the authorizer shall provide an estimate of a choice school's enrollment broken down by resident school districts to the superintendent of public instruction for review and possible adjustment. The ANB determined by the superintendent must be used for budgeting and BASE funding program purposes for the upcoming school year.

(b) A choice school must have a separate basic entitlement included in the general fund budget of the school district in which the choice school is physically located. The authorizer of the choice school shall determine the choice school's need for a basic entitlement and, not later than February 1, communicate to the superintendent of public instruction the percentage, not to exceed 80%, of the basic entitlement amount under 20-9-306 to be included in the located school district's general fund budget for the ensuing school fiscal year for the choice school.

(3) The county treasurer of the county in which a choice school is physically located shall establish a general fund and other necessary funds for the choice school separate from the funds of school districts of the county.

(4) (a) The superintendent of public instruction shall:

(i) reduce a resident school district's BASE aid payment in August through May by an amount equal to 10% of the student amount for the resident school district multiplied by the number of full-time equivalent resident students enrolled in a choice school that were included in the resident school district's general fund budget calculations; and

(ii) by the fifth day of each month from September through June of the school fiscal year, distribute to the county treasurer in which the choice school is located the amount determined under subsection (4)(a)(i) for deposit in the choice school's general fund.

(b) The superintendent of public instruction shall reduce the BASE aid payment of a school district in which a choice school is physically located by an amount equal to 10% of the choice school's basic entitlement amount pursuant to subsection (2)(b) in August through May and by the fifth day of each month from September through June of the school fiscal year and distribute the money to the county treasurer for deposit in the choice school's general fund.

(5) A choice school experiencing significant enrollment increases must receive additional funding in an equitable manner with that received by school districts under Title 20, chapter 9.

(6) (a) A choice school may not charge tuition and may charge only fees that may be imposed by traditional public schools in the state.

(b) The out-of-district attendance and tuition laws under Title 20, chapter 5, part 3, do not apply to a student enrolled in a choice school located outside the student's district of residence.

(7) A choice school may obligate the choice school to indebtedness and is solely responsible for those debts. A choice school is not responsible for any debt service obligations that exist in the school district in which the choice school is physically located.

(8) Nothing in [sections 1 through 17] may be construed to prohibit any person, organization, business, or foundation from providing funding or other assistance for the establishment or operation of a choice school. The governing board of a choice school is authorized to accept gifts or donations of any kind made to the choice school and to expend or use the gifts or donations in accordance with the conditions prescribed by the donor. A gift or donation may not be accepted if the gift or donation is subject to a condition that is contrary to any provision of law or term of the charter contract.

(9) Money received by a choice school from any source and remaining in the choice school's accounts at the end of a budget year must remain in the choice school's accounts for use by the choice school in subsequent years.

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

(a) "Resident school district" means the school district in which a choice school student resides.

(b) "Student amount" means the sum of:

(i) the per-ANB rate for the total data-for-achievement payment rate under 20-9-306;

(ii) the per-ANB rate for the total Indian education for all payment rate under 20-9-306;

(iii) 140% of the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321; and

(iv) the applicable per-ANB maximum rate established in 20-9-306 for the choice school student multiplied by the ratio, rounded to the nearest 1/100 and

not to exceed 1.00, of the resident school district's adopted general fund budget to its maximum general fund budget in the prior year.

Section 16. Community choice school access to district facilities and land. (1) A choice school has a right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or an unused portion of a public school facility or property located in a school district from which the choice school draws its students.

(2) A choice school may negotiate and contract at or below fair market value with a school district, the governing body of a college or university or community college, or any other public entity or for-profit or nonprofit private entity for the use of a facility for a school building.

Section 17. Community choice school account. (1) There is a community choice school account in the state special revenue fund provided for in 17-2-102 and administered by the commission. The purpose of the account is for the receipt and expenditure of gifts, grants, legacies, devises, and donations given specifically to support the creation and operation of the Montana community choice schools and commission.

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying choice schools as determined by the commission. Money in the account is derived from a private nonstate source and is payable by the commission without an appropriation pursuant to 17-8-101.

(3) A gift or donation made directly to a specific choice school or schools is not prohibited by this section.

Section 18. Transition. The legislature intends that the community choice school commission established in [section 4] organize its operations, adopt bylaws, approve authorizers, and solicit choice school proposals during the fiscal year beginning July 1, 2023, with the goal of having operating choice schools for the school year beginning July 1, 2024.

Section 19. Codification instruction. [Sections 1 through 17] are intended to be codified as a new chapter in Title 20.

Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 514

[HB 580]

AN ACT ESTABLISHING REPORTING REQUIREMENTS FOR EXECUTIVE BRANCH AGENCIES, THE LEGISLATIVE BRANCH, AND THE JUDICIAL BRANCH ON REQUESTS FOR INFORMATION MADE PURSUANT TO ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION AND TITLE 2, CHAPTER 6, AND RELATED INFORMATION ON THE EFFORTS AND EXPENSE TO FULFILL REQUESTS; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Reporting. (1) To document the impacts and process associated with compliance with information requests made pursuant to Article II, section 9, of the Montana constitution and Title 2, chapter 6, each quarter,

each executive branch agency, the legislative branch, and the judicial branch shall submit the information required by this section for the prior quarter to the legislative finance committee. The executive branch agencies subject to this section include the agencies headed by officers listed in Article VI, section 1, of the Montana constitution and the departments created pursuant to Article VI, section 7, of the Montana constitution.

(2) The report must contain the following information:

(a) the number of requests for information submitted to each entity in the preceding quarter;

(b) the identity of each requester;

(c) what information was requested;

(d) the date of the request; and

(e) the status of the request, whether completed or in progress.

(3) If the entity has completed the request, the report must also provide the following information:

(a) the date on which compliance with the request occurred;

(b) the number of hours to fulfill the request; and

(c) costs imposed on the requester to fulfill the request.

(4) For any request not completed in a quarter and reported pursuant to this section, the request must be reported on subsequent reports until the request has been completed.

(5) This section does not apply to requests that:

(a) were not submitted according to a public information request process or protocol established by an agency;

(b) pertain only to a specific person or property for applications, vital records, licenses, permits, registrations, and related supporting documents; or

(c) were for information accessible on a state website or other publication available at the time the request was made.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 8, part 4, and the provisions of Title 17, chapter 8, part 4, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2024.

Approved May 18, 2023

CHAPTER NO. 515

[HB 588]

AN ACT REVISING EDUCATION LAWS RELATED TO INCENTIVES TO RAISE STARTING TEACHER PAY; CLARIFYING THAT THE FIRST 3 YEARS OF A TEACHER'S CAREER DO NOT INCLUDE ANY YEARS UNDER AN EMERGENCY AUTHORIZATION FOR THE INCENTIVE; INCLUDING CLASS 5 PROVISIONAL LICENSEES IN INCENTIVE ELIGIBILITY; AMENDING SECTION 20-9-324, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-9-324, MCA, is amended to read:

"**20-9-324. Incentives for school districts meeting legislative goal for competitive base pay of teachers in public school districts -- definitions.** (1) A district, as defined in 20-6-101, must receive an extra quality educator payment for certain quality educators, calculated as provided in 20-9-306(16), if it meets the legislative goal for competitive base pay of teachers in subsection (2).

(2) The legislative goal for competitive base pay of teachers is a teacher base pay that in the applicable year:

(a) is equal to at least 10 times as much as the quality educator payment amount provided in 20-9-306(16); and

(b) for a school district classified as first class pursuant to Title 20, chapter 6, is not less than 70% of the teacher average pay in the school district.

(3) A district seeking an incentive for the subsequent school fiscal year under this section shall, by December 1, provide the data necessary, as determined by the superintendent of public instruction, to verify:

(a) that the district has met the legislative goal established in subsection (2) for the current year; and

(b) the number of full-time equivalent teachers that are in the first 3 years of the teacher's teaching career in the current year. *The first 3 years of a teacher's teaching career do not include a year of teaching under an emergency authorization pursuant to 20-4-111.*

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

(a) "Teacher" means an individual who:

(i) holds a current class 1, 2, 4, *5,* 6, or 7 license issued by the office of public instruction under rules adopted by the board of public education pursuant to 20-4-102; and

(ii) is employed by a school district in an instructional position requiring teacher licensure.

(b) "Teacher average pay" means the total compensation paid by a school district to all of its teachers, not including bonuses, stipends, or extended duty contracts, divided by the total full-time equivalent teachers employed in the district, with full-time equivalence rounded to the nearest tenth.

(c) "Teacher base pay" means the lowest salary for a beginning teacher incorporated in the district's collective bargaining agreement if the teachers' employment is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, or incorporated in district policy if the teachers' employment is not covered by a collective bargaining agreement, not including bonuses, stipends, or extended duty contracts."

Section 2. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 516

[HB 590]

AN ACT CREATING LAWS RELATED TO VIOLENCE AGAINST HEALTH CARE WORKERS AND WORKERS EMPLOYED BY HEALTH CARE PROVIDERS; PROVIDING FOR REPORTING OF VIOLENCE AGAINST A HEALTH CARE WORKER; REQUIRING A REPORT TO THE DEPARTMENT OF JUSTICE OF VIOLENCE AGAINST HEALTH CARE WORKERS; AMENDING SECTION 50-16-805, MCA; AND PROVIDING A TERMINATION DATE.

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

Section 1. Reporting of violence against health care employee. (1) If a health care employee suffers an act of violence while on duty, the health care employer shall ensure that the health care employee and any employees who witnessed the act of violence provide oral reports to the health care employer. The oral reports must be made by the fastest possible means, absent

circumstances beyond the control of the health care employer, and not later than 24 hours after the act of violence.

(2) The health care employer of a health care employee who suffers an act of violence shall report the event to law enforcement if the health care employee consents.

(3) (a) After the health care employer receives an oral report under subsection (1), the health care employer shall produce a written report that includes the following:

(i) the phone number, address, and contact person for the health care employer;

(ii) the job title, name, phone number, and address of the health care employee who suffered the act of violence;

(iii) the name, phone number, and address of the person who committed the act of violence, if known; and

(iv) a detailed description of the act of violence, noting the date and time the oral report was made.

(b) Reports created in accordance with this section are not considered protected health care information and must be retained by health care employers separate and apart from a patient's medical record.

(4) The health care employer shall retain a copy of the written report for 5 years and provide copies of the reports to the department of justice quarterly or on request by the department of justice. Disclosure of this information by a health care employer should be made on a minimum necessary basis and the disclosure is authorized by 50-16-805.

(5) Based on information received under this section, the department of justice shall compile an annual report on workplace violence in health care and publish the report to its website annually.

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

(a) "Act of violence" means an action in which a person intentionally or purposefully uses force that causes injury to another person or threatens to use force against a person that causes substantial fear of injury to the person.

(b) "Health care employee" means any employee who is employed by a health care employer and who provides health care services in the course of employment.

(c) (i) "Health care employer" means an employer of health care employees.

(ii) The term does not include the department of public health and human services or any health care facility operated by, or on behalf of, the department of public health and human services.

Section 2. Section 50-16-805, MCA, is amended to read:

"**50-16-805. Disclosure of information allowed for certain purposes.** (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

(3) A health care provider may disclose health care information to a fetal, infant, child, and maternal mortality review team for the purposes of 50-19-402.

(4) A health care employer, as defined in [section 1], may disclose information contained in written reports pursuant to [section 1] to the department of justice for data collection and reporting purposes."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 2, part 2, and the provisions of Title 39, chapter 2, part 2, apply to [section 1].

Section 4. Termination. [Sections 1 and 2] terminate June 30, 2025.

Approved May 18, 2023

CHAPTER NO. 517

[HB 591]

AN ACT REVISING LAWS RELATING TO TRAVEL INSURANCE; PROVIDING DEFINITIONS; PROVIDING FOR A LIMITED LINES LICENSE; PROVIDING FOR TRAVEL PROTECTION PLANS; PROVIDING FOR SALES PRACTICES; PROVIDING FOR TRAVEL ADMINISTRATORS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 33-17-1401, 33-17-1402, AND 33-17-1404, MCA.

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

Section 1. Section 33-17-1401, MCA, is amended to read:

"**33-17-1401. Definitions.** As used in this part, the following definitions apply:

~~(1) "Administrator" means an administrator as defined in 33-17-102.~~

(1) "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

(2) "Blanket travel insurance" means a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group.

(3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the non-refundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) "Commissioner" means the commissioner of insurance of the state of Montana.

(5) "Eligible group" means, for the purpose of travel insurance, two or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including but not limited to any of the following:

(a) any entity engaged in the business of providing travel or travel services, including but not limited to tour operators, lodging providers, vacation property owners, hotels and resorts, travel clubs, travel agencies, property managers, cultural exchange programs, and common carriers or the operator, owner, or lessor of a means of transportation of passengers, including but not limited to airlines, cruise lines, railroads, steamship companies, and public bus carriers, wherein with regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to the travel;

(b) any college, school, or other institution of learning, covering students, teachers, employees, or volunteers;

(c) any employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;

(d) any sports team, camp, or sponsor thereof, covering participants, members, campers, employees, officials, supervisors, or volunteers;

(e) any religious, charitable, recreational, educational, or civic organization, or branch thereof, covering any group of members, participants, or volunteers;

(f) any financial institutions or financial institution vendor, or parent holding company, trustee, or agent of or designated by one or more financial institutions or financial institution vendors, including accountholders, credit card holders, debtors, guarantors, or purchasers;

(g) any incorporated or unincorporated association, including labor unions, having a common interest, constitution, and bylaws, and organized and maintained in good faith for purposes other than obtaining insurance for members or participants of the association covering its members;

(h) any trust or the trustees of a fund established, created, or maintained for the benefit of and covering members, employees, or customers, subject to the commissioner's permitting the use of a trust and the state's premium tax provisions in 33-2-705 of one or more associations meeting the requirements in subsection (5)(g);

(i) any entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers;

(j) any volunteer fire department, ambulance, rescue, police, court, or any first aid, civil defense, or other volunteer group;

(k) preschools, daycare institutions for children or adults, and senior citizen clubs;

(l) any automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company, is the policyholder under a policy to which this section applies.

(m) any other group where the commissioner has determined that the members are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, and that issuance of the policy would not be contrary to the public interest.

(6) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details.

~~(2)~~*(7)* "Limited lines travel insurance producer" means a:

(a) managing general agent or third-party administrator; or

(b) licensed insurance producer, including a limited lines producer, designated by an insurer as the travel insurance supervising entity as set forth in 33-17-1404~~.~~*; or*

(c) travel administrator.

~~(3)~~*(8)* "Offer and disseminate" means providing general information, including a description of coverage and price, as well as processing applications, collecting premiums, and performing other activities not requiring licensure by the state.

(9) "Travel administrator" means a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on residents of this state in connection with travel insurance, except that a person may not be considered a travel administrator if that person's only actions that would otherwise cause it to be considered a travel administrator are among the following:

(a) a person working for a travel administrator to the extent that the person's activities are subject to the supervision and control of the travel administrator;

(b) an insurance producer selling insurance or engaged in administrative and facilitation of claims-related activities within the scope of the producer's license;

(c) a travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with this part;

(d) an individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney at law and who does not collect charges or premiums in connection with insurance coverage; or

(e) a business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer.

(10) "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event and that do not result in the transfer or shifting of risk that would constitute the business of insurance. Travel assistance services include, but are not limited to security advisories; destination information; vaccination and immunization information services; travel reservation services; entertainment; activity and event planning; translation assistance; emergency messaging; international legal and medical referrals; medical case monitoring; coordination of transportation arrangements; emergency cash transfer assistance; medical prescription replacement assistance; passport and travel document replacement assistance; lost luggage assistance; concierge services; and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and are not related to insurance.

~~(4)~~*(11)* (a) "Travel insurance" means insurance coverage for personal risks incident to planned travel, including but not limited to:

(i) interruption or cancellation of a trip or event;

(ii) loss of baggage or personal effects;

(iii) damages to accommodations or rental vehicles; ~~and~~

(iv) sickness, accident, disability, or death occurring during travel*;*

(v) emergency evacuation;

(vi) repatriation of remains; or

(vii) any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the commissioner.

(b) The term does not include major medical plans that provide comprehensive medical protection for travelers on trips lasting 6 months or longer, including those working overseas and military personnel being deployed.

(c) Travel insurance must be classified and filed for purposes of rates and forms under an inland marine line of insurance, provided, however, that travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively, or in conjunction with related coverages of emergency evacuation or repatriation of remains, may be filed under either an accident and health line of insurance or an inland marine line of insurance so long as the insurer is authorized to transact business in the line of insurance under which the rates and forms are filed.

(d) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, provided those standards also meet the state's underwriting standards for inland marine.

(12) "Travel protection plans" means plans that provide one or more of the following:

(a) travel insurance;

(b) travel assistance services; or

(c) cancellation fee waivers.

~~(5)~~*(13)* "Travel retailer" means a business entity that makes, arranges, or offers travel services and that may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer."

Section 2. Section 33-17-1402, MCA, is amended to read:

"**33-17-1402. Requirements to offer and disseminate travel insurance -- ~~fees -- types of policies~~ -- rulemaking.** (1) *The commissioner may issue a limited lines travel insurance producer license to an individual or business entity that has filed with the commissioner an application for a limited lines travel insurance producer license in a form and manner prescribed by the commissioner. The limited lines travel insurance producer must be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer. A person may not act as a limited lines travel insurance producer or travel retailer unless properly licensed.*

(2) A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license only if the following conditions are met:

(a) the limited lines travel insurance producer or travel retailer provides purchasers of travel insurance with:

(i) a description of the material terms or the actual material terms of the insurance coverage;

(ii) a description of the process for filing a claim;

(iii) a description of the review or cancellation process for the travel insurance policy; and

(iv) the identity and contact information of the insurer and the limited lines travel insurance producer;

~~(b) at the time of licensure, the limited lines travel insurance producer establishes and maintains a registry on a form prescribed by the commissioner of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf. The registry must be maintained and updated annually by the limited lines travel insurance producer and must include the name, address, and contact information of each travel retailer and of an officer or person who directs or controls each travel retailer's operations, the travel retailer's federal tax identification number, and a statement that the travel retailer has not been convicted of a violation of 18 U.S.C. 1033. The limited lines travel insurance producer shall submit its registry to the commissioner within 10 business days of the commissioner's request. The commissioner shall require a fee for filing the registry that is commensurate with the cost of maintaining a file for all registries filed with the commissioner.~~

~~(c)~~*(b)* the limited lines travel insurance producer designates an employee who is an individual licensed producer as the designated responsible producer responsible for the limited lines travel insurance producer's compliance with the applicable insurance laws and rules of this state;

~~(d)~~*(c)* the designated responsible producer, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations have complied with the fingerprinting requirements in the resident state of the limited lines travel insurance producer;

~~(e)~~*(d)* the limited lines travel insurance producer has paid all applicable insurance producer licensing fees required pursuant to 33-2-708 or other applicable state law; and

~~(f)~~*(e)* the limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the commissioner. The training material must, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

~~(2)~~*(3)* A travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that:

(a) provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(c) explain that a travel retailer employee or authorized representative who is not licensed as an insurance producer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

~~(3)~~*(4)* A travel retailer's employees or authorized representatives who are not licensed as insurance producers may not:

(a) evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

(b) evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(c) hold themselves out as licensed insurers, licensed producers, or insurance experts.

~~(4)~~*(5)* Travel insurance may be provided under an individual policy or under a group or master policy.

~~(5) The commissioner may adopt rules to implement the provisions of this part.~~

(6) A person licensed in property and casualty as an insurance producer is authorized to sell, solicit, and negotiate travel insurance. A property and casualty insurance producer is not required to become appointed by an insurer in order to sell, solicit, or negotiate travel insurance."

Section 3. Section 33-17-1404, MCA, is amended to read:

"**33-17-1404. Responsibility -- enforcement -- penalties -- *scope*.** (1) The limited lines travel insurance producer is the supervising entity responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with the provisions of this part.

(2) A limited lines travel insurance producer and any travel retailer offering and disseminating travel insurance under the limited lines travel insurance producer's license are subject to the ~~applicable unfair trade practices provisions of Title 33, chapter 18, including penalty provisions, and to other~~ enforcement provisions applicable to insurance producers generally.

(3) All other applicable provisions of the insurance code continue to apply to travel insurance, except that the specific provisions of this part supersede any general provisions of law that would otherwise be applicable to travel insurance."

Section 4. Travel protection plans. (1) Travel protection plans may be offered for one price for the combined features that the travel protection plan offers in this state if:

(a) the travel protection plan clearly discloses to the consumer, at or prior to the time of purchase, that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity, at or prior to the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each; and

(b) the fulfilment materials:

(i) describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan; and

(ii) include the travel insurance disclosures and the contact information for persons providing travel assistance services and cancellation fee waivers, as applicable.

Section 5. Sales practices. (1) All persons offering travel insurance to residents of this state are subject to the provisions of the unfair trade practice provisions of Title 33, chapter 18, except as otherwise provided in this section. In the event of a conflict between this part and other provisions of Title 33 regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this part control.

(2) Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice under Title 33, chapter 18.

(3) The marketing of a travel insurance policy must meet the following requirements:

(a) All documents provided to consumers prior to the purchase of travel insurance, including but not limited to sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy itself, including but not limited to forms, endorsements, policies, rate filings, and certificates of insurance.

(b) For travel insurance policies or certificates that contain pre-existing condition exclusions, information and an opportunity to learn more about the pre-existing condition exclusions must be provided any time prior to the time of purchase and included in the coverage's fulfillment materials.

(c) (i) The fulfillment materials and the information described in 33-17-1402(2)(a)(i) through (2)(a)(iv) must be provided to a policyholder or certificate holder as soon as practicable following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a claim under the travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

(A) 15 days following the date of delivery of the travel protection plan's fulfillment materials by postal mail; or

(B) 10 days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail.

(ii) For the purposes of subsection (3)(c)(i), "delivery" means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.

(d) The company shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

(e) When travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it is not an unfair

trade practice or other violation of law if an accurate summary or short description of coverage is provided on the web page and as long as the consumer has access to the full provisions of the policy through electronic means.

(4) A person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not do so by using negative option or opt out, which would require a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(5) It is an unfair trade practice to market blanket travel insurance coverage as free.

(6) When a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

(a) purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or

(b) agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.

Section 6. Travel administrators. (1) A person may not act or represent itself as a travel administrator for travel insurance in this state unless the person:

(a) is a licensed property and casualty insurance producer in this state for activities permitted under the producer's license; or

(b) holds a valid third-party administrator certificate in this state.

(2) A travel administrator and its employees are exempt from the licensing requirements of Title 33, chapter 17, part 3, for travel insurance it administers.

(3) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer and is responsible for ensuring that the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the commissioner on request.

Section 7. Rulemaking. The commissioner may adopt rules necessary to implement the provisions of this part.

Section 8. Codification instruction. [Sections 4 through 7] are intended to be codified as an integral part of Title 33, chapter 17, part 14, and the provisions of Title 33, chapter 17, part 14, apply to [sections 4 through 7].

Approved May 18, 2023

CHAPTER NO. 518

[HB 592]

AN ACT DIRECTING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO AMEND DEQ4 TO ALLOW FOR DRAIN SYSTEMS IN AREAS THAT HAVE BEEN CUT OR FILLED TO BE USED FOR NEW SUBSURFACE WASTEWATER TREATMENT SYSTEMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Department to amend rules and circular. The department of environmental quality, under its authority to promulgate rules pursuant to 75-5-305 and 76-4-104, shall amend the technical standards found in DEQ4 and all necessary administrative rules to allow for a new subsurface wastewater treatment system in an area that has been cut or filled.

(2) The amendments to DEQ4 and all necessary administrative rules required in subsection (1) must provide that soil testing conditions and 4 feet of natural soil separation to a limiting layer are required. Cut or fill may not be used to provide the required vertical or horizontal separation under rule or circular.

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

Approved May 18, 2023

CHAPTER NO. 519

[HB 597]

AN ACT REVISING ALLOCATIONS FROM THE 9-1-1 ACCOUNT; PROVIDING FOR A TRANSFER OF FUNDS; AMENDING SECTION 10-4-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 10-4-304, MCA, is amended to read:

"**10-4-304. (Temporary) Establishment of 9-1-1 accounts.** (1) There is established in the state special revenue fund ~~an account~~ *accounts* for fees collected for 9-1-1 services pursuant to 10-4-201.

(2) Except as provided in subsection (5), funds in the ~~account~~ *accounts* are statutorily appropriated to the department, as provided in 17-7-502. Except as provided in subsection (3), funds that are not used for the administration of this chapter by the department,~~, used for public safety radio communications, if allowable~~, *used for public safety radio communications, if allowable,* or transferred in accordance with ~~subsection~~ *subsections* (5) *and (6)* 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%~~ *7%* 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~~.~~*; and*

(c) 18% of the account must be deposited in an account for use by the department, which shall confer with the 9-1-1 advisory council on proposed expenditures and implementation for a statewide next generation 9-1-1 system.

(3) 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.

(5) Each fiscal year from July 1, 2021, through June 30, 2030, the state treasurer shall transfer $450,000 from the account established in subsection (1) to the 9-1-1 GIS mapping account established in 10-4-310 by August 15 of each fiscal year.

(6) On July 1, 2023, the state treasurer shall transfer the balance from the account established in subsection (2)(b) into the account established in subsection (2)(c). (Terminates July 1, 2031--sec. 8, Ch. 200, L. 2021.)

10-4-304. (Effective July 2, 2031) Establishment of 9-1-1 accounts. (1) Beginning July 1, 2018, there is established in the state special revenue fund ~~an account~~ *accounts* for fees collected for 9-1-1 services pursuant to 10-4-201.

(2) Funds in the ~~account~~ *accounts* 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 ~~or used for public safety radio communications, if allowable,~~ *or used for public safety radio communications, if allowable,* 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 2. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 520

[HB 612]

AN ACT REVISING INSURANCE COVERAGE REQUIREMENTS FOR SELF-MANAGEMENT TRAINING AND EDUCATION FOR DIABETES; AMENDING SECTIONS 2-18-704, 33-22-129, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Coverage for self-management training and education for treatment of diabetes. (1) Each individual policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(2) (a) Coverage must include an annual benefit for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes. At a minimum, the benefit must consist of:

(i) 20 visits of training and education in diabetes self-management in either an individual or group setting within the first year of diagnosis if the insured has not received the training and education previously; and

(ii) 12 visits of followup diabetes self-management training and education services in subsequent years for an insured who has previously received and exhausted the initial 20 visits of education under subsection (2)(a)(i).

(b) Nothing in subsection (2)(a) prohibits an insurer from providing a greater benefit.

(c) For the purposes of this subsection (2), the term "visit" refers to a period of 30 minutes.

(3) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(4) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

Section 2. Section 2-18-704, MCA, is amended to read:

"**2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for:

(a) treatment of inborn errors of metabolism, as provided for in 33-22-131;

(b) therapies for Down syndrome, as provided in 33-22-139;

(c) treatment for children with hearing loss as provided in 33-22-128(1) and (2);

(d) the care and treatment of mental illness in accordance with the provisions of Title 33, chapter 22, part 7; and

(e) telehealth services, as provided for in 33-22-138.

(8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the advisory committee on immunization practices of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (8).

(d) For purposes of this subsection (8):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (8)(b) and delivered by a physician or a health care professional supervised by a physician.

(9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must continue to provide coverage for any dependent, as defined in the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in the insurance contract or plan, may be required to be paid by the insured and not by the employer.

(10) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) *(i)* The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for *medically necessary and prescribed* outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a ~~licensed health care professional with expertise in diabetes~~ *a licensed health care professional with expertise in diabetes. At a minimum, the benefit must consist of:*

(A) 20 visits of training and education in diabetes self-management provided in either an individual or group setting if the person has not received the training and education previously; and

(B) 12 visits of followup diabetes self-management training and education services in subsequent years for an insured who has previously received and exhausted the initial 20 visits of education.

(ii) For the purposes of this subsection (12)(a), the term "visit" refers to a period of 30 minutes.

~~(b) Coverage must include a $250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.~~

~~(c)~~*(b)* The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired),

test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

~~(d)~~*(c)* Nothing in ~~subsection (12)(a), (12)(b), or (12)(c)~~ *subsection (12)(a) or (12)(b)* prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in which case subsection (12)(a)~~,~~ *or* (12)(b)~~, or (12)(c)~~, as appropriate, does not apply.

~~(e)~~*(d)* Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

~~(f)~~*(e)* This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.

(13) (a) The state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as is available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(b) The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:

(i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the Montana university system group benefits plans or if the plans have not received timely premium payments;

(ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(iii) the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law.

(14) The state employee group benefit plans and the Montana university system group benefits plans must comply with the provisions of 33-22-153.

(15) An insurance contract or plan issued under this part and a group benefits plan issued by the Montana university system must provide mental health coverage that meets the provisions of Title 33, chapter 22, part 7. (See compiler's comments for contingent termination of certain text.)"

Section 3. Section 33-22-129, MCA, is amended to read:

"**33-22-129. Coverage for outpatient self-management training and education for treatment of diabetes -- limited benefit for medically necessary equipment and supplies.** (1) Each group disability policy,

certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(2) (a) Coverage must include ~~a $250~~ *an annual* benefit for ~~a person each year for~~ medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes. *At a minimum, the benefit must consist of:*

(i) 20 visits of training and education in diabetes self-management provided in either an individual or group setting if the person has not received the training and education previously; and

(ii) 12 visits of followup diabetes self-management training and education services in subsequent years for an insured who has previously received and exhausted the initial 20 visits of education.

(b) Nothing in subsection (2)(a) prohibits an insurer from providing a greater benefit.

(c) For the purposes of this subsection (2), the term "visit" refers to a period of 30 minutes.

(3) Each group disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for diabetic equipment and supplies that is limited to insulin, syringes, injection aids, devises for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(4) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(5) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

(6) (a) This section does not apply to any employee group insurance program of a city, town, county, school district, or other political subdivision of this state that on January 1, 2002, provides substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies provided for in subsection (3).

(b) Any employee group insurance program of a city, town, county, school district, or other political subdivision of this state that reduces or discontinues substantially equivalent or greater coverage after January 1, 2002, is subject to the provisions of this section."

Section 4. Section 33-35-306, MCA, is amended to read:

"**33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) Title 33, chapter 2, parts 23 and 24;

(e) 33-3-308;
(f) Title 33, chapter 7;
(g) Title 33, chapter 18, except 33-18-242;
(h) Title 33, chapter 19;
(i) 33-22-107, 33-22-128, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, and 33-22-153;
(j) [section 1];
~~(j)~~*(k)* 33-22-512, 33-22-515, 33-22-525, and 33-22-526;
~~(k)~~*(l)* Title 33, chapter 22, part 7; and
~~(l)~~*(m)* 33-22-707.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 3, and the provisions of Title 33, chapter 22, part 3, apply to [section 1].

Section 6. Effective date. [This act] is effective January 1, 2024.

Approved May 18, 2023

CHAPTER NO. 521

[HB 619]

AN ACT REVISING LAWS RELATING TO THE ASSESSMENT OF LANGUAGE DEVELOPMENT IN DEAF AND HARD-OF-HEARING CHILDREN; REQUIRING THE CREATION OF A PARENT RESOURCE ON LANGUAGE DEVELOPMENTAL MILESTONES; ESTABLISHING LANGUAGE ASSESSMENT STANDARDS; ESTABLISHING A TEMPORARY ADVISORY COMMITTEE; REQUIRING REPORTS; PROVIDING DEFINITIONS; AMENDING SECTIONS 20-7-404 AND 52-2-901, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Parent resource on language developmental milestones -- criteria -- distribution -- timeline for development. (1) The department of public health and human services and the office of public instruction shall collaborate to select language developmental milestones from existing standardized norms to develop a resource for parents to use in monitoring the expressive and receptive language acquisition of deaf and hard-of-hearing children.

(2) The parent resource must:

(a) include the language developmental milestones developed in accordance with subsection (4);

(b) be appropriate, in both content and administration, for use with deaf and hard-of-hearing children from birth through 8 years of age who use American sign language, English, or both;

(c) present the language developmental milestones in terms of the typical development of all children by age range;

(d) be written for clarity and ease of use by parents;

(e) be aligned with:

(i) the department's existing infant, toddler, and preschool guidelines;

(ii) the existing instruments used to assess the development of children with disabilities pursuant to federal law; and

(iii) the state standards in English language arts;

(f) make clear that a parent has the right to select a spoken language, a signed language, or both, as the language to be used for the child's language acquisition and developmental milestones;

(g) make clear that the parent resource is not a formal assessment of language development and that a parent's observations of a child may differ from formal assessment data presented at a meeting to discuss an individualized family service plan or individualized education program;

(h) make clear that a parent may bring the parent resource to an individualized family service plan or individualized education program meeting to share the parent's observations about the child's development; and

(i) include fair, balanced, and comprehensive information about languages, communication modes, and available services and programs.

(3) The department and the office of public instruction shall disseminate the parent resource on their websites.

(4) (a) (i) On or before March 1, 2024, the department and the office of public instruction shall provide the language development advisory committee provided for in [section 2] with a list of existing language developmental milestones from existing standardized norms. Each agency shall provide any relevant information it holds regarding the language developmental milestones for possible inclusion in the parent resource.

(ii) The language developmental milestones must be aligned with the agencies' existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and the state standards in English language arts.

(b) On or before June 1, 2024, the advisory committee shall recommend language developmental milestones to be selected for the parent resource.

(c) On or before June 30, 2024, the department and the office of public instruction shall inform the advisory committee of language developmental milestones selected for inclusion in the parent resource.

Section 2. Language development advisory committee. (1) There is a language development advisory committee consisting of at least 10 but no more than 15 volunteers selected collaboratively by the director of the department and the superintendent of public instruction from among names submitted by statewide associations representing deaf and hard-of-hearing individuals and families of deaf and hard-of-hearing children.

(2) The advisory committee must include, to the extent possible:

(a) a parent of a child who is deaf or hard of hearing and uses both American sign language and English;

(b) a parent of a child who is deaf or hard of hearing and uses only spoken English, with or without visual supplements;

(c) a parent of a child who is deaf or hard of hearing and has one or more co-occurring disabilities;

(d) a representative of the Montana school for the deaf and blind who provides outreach and is fluent in both American sign language and English;

(e) a representative of the department of public health and human services;

(f) a representative of the office of public instruction;

(g) a speech-language pathologist;

(h) a pediatric audiologist; and

(i) at least four members from among the following:

(i) an expert who researches language outcomes for deaf and hard-of-hearing children who use American sign language and English;

(ii) a credentialed teacher of deaf and hard-of-hearing students with expertise in curriculum and instruction in American sign language and English;

(iii) a credentialed teacher of deaf and hard-of-hearing students with expertise in curriculum and instruction in spoken English, with or without visual supplements;

(iv) an advocate from a statewide association that represents the deaf who advocates for teaching using both American sign language and English;

(v) an early intervention specialist who works with deaf and hard-of-hearing infants and toddlers using both American sign language and English;

(vi) a credentialed teacher of deaf and hard-of-hearing students with expertise in American sign language and English language assessments;

(vii) a representative from a parent training information center;

(viii) a representative from an association of interpreters who provide services to support the communication needs of deaf and hard-of-hearing students in educational settings; or

(ix) a psychologist with expertise in assessing deaf and hard-of-hearing children who is fluent in American sign language and English.

(3) In selecting members, the director of the department and the superintendent shall ensure that:

(a) at least two and up to six of the members are deaf or hard of hearing, with preference given, when appointing members with equal credentials, to deaf and hard-of-hearing members in order to include the greatest number of deaf and hard-of-hearing members possible; and

(b) the membership is balanced among people who personally, professionally, or parentally use the dual languages of American sign language and English and members who personally, professionally, or parentally use only spoken English.

(4) The committee shall:

(a) advise the department and the office of public instruction on the selection of language developmental milestones for children who are deaf or hard of hearing that are equivalent to milestones for children who are not deaf or hard of hearing, for inclusion in the parent resource developed pursuant to [section 1];

(b) make recommendations on the selection and administration of provider or educator tools or assessments selected pursuant to 52-2-901;

(c) advise the department or the office of public instruction on how the content and administration of the existing instruments used to assess the development of children with disabilities correlate to assessing the language development of deaf and hard-of-hearing children to ensure the appropriate use of the instrument with deaf and hard-of-hearing children;

(d) make recommendations on unbiased and comprehensive materials to add to the parent resource; and

(e) make recommendations regarding future research to improve the measurement of the progress of deaf and hard-of-hearing children in language development.

(5) The committee shall meet by means of videoconference only at least four times a year.

(6) Committee members are not entitled to compensation for their services other than any compensation provided by their employers.

(7) The committee is attached to the department of public health and human services for administrative purposes. The department shall provide staff support to the committee.

Section 3. Definitions. As used in this part, the following definitions apply:

(1) "American sign language" means visual American sign language, tactile American sign language, or protactile American sign language.

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

(3) "English" means spoken English, written English, or English with or without the use of visual supplements, cued speech, or manually coded English.

(4) "Language" means the use of American sign language or English.

(5) "Language developmental milestones" means milestones of development aligned with the existing state instruments used to meet the requirements of 20 U.S.C. 1414(b) for the assessment of children from birth through 8 years of age.

Section 4. Section 20-7-404, MCA, is amended to read:

"**20-7-404. Cooperation of state agencies.** *(1)* The department of public health and human services and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in*:*

(a) assisting school districts in discovering children in need of special education*; and*

(b) carrying out the provisions of Title 52, chapter 2, part 9.

(2) This section may not be construed to interfere with the purpose and function of these state agencies."

Section 5. Section 52-2-901, MCA, is amended to read:

"**52-2-901. Evaluation and assessment of language ~~and literacy~~ development in deaf and hard-of-hearing children -- *exception* -- report.** (1) In providing early intervention services for deaf and hard-of-hearing children and their families pursuant to *Part B and* Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431, et seq., the department of public health and human services *and the office of public instruction* shall provide a list of tools for qualified personnel *and educators* to use in evaluating and assessing the language ~~and literacy~~ development of deaf and hard-of-hearing children. *The tools must be selected from the list submitted by the language development advisory committee pursuant to [section 2].*

(2) A tool:

(a) must be in a format that shows the stages of language development for *American sign language or* English~~, for American sign language, or for another language spoken in the child's home~~;

(b) must be used by qualified personnel *and educators* to track the development of deaf and hard-of-hearing children's expressive and receptive language acquisition and developmental stages toward ~~literacy~~ *effective communication*;

(c) must be selected from existing instruments or assessments used to assess the development of ~~all~~ *deaf and hard-of-hearing* children from birth ~~to 3 years~~ *through 8 years* of age; and

(d) must be appropriate, in both content and administration, for use with deaf and hard-of-hearing children.

(3) ~~The~~ *Except as provided in subsection (8), the* tools ~~may~~ *must* be used, as part of the assessment required by federal law, by a child's individualized family service plan *or individualized education program, as applicable,* to track the child's progress and to establish or modify the child's individualized family service plan *or individualized education program*.

(4) Each child's language development must be assessed:

(a) every 6 months from birth until the child reaches 3 years of age; and

(b) annually from 3 years of age until the child reaches 9 years of age.

(5) If a deaf or hard-of-hearing child does not progress through established benchmarks in expressive and receptive language skills as measured by one of the educator tools or assessments selected pursuant to this section or by the existing instrument used to assess the development of children with disabilities,

the child's individualized family service plan or individualized education program team must:

(a) explain in detail the reasons the child is not meeting the language developmental milestones or progressing towards them; and

(b) recommend specific strategies, services, and programs that may be provided to assist the child's success in effective communication.

~~(4)~~*(6) (a)* The department shall provide ~~a~~ *the* list of tools selected pursuant to this ~~section~~ *part* to providers of early intervention services to track the language ~~and literacy~~ development of the deaf and hard-of-hearing children to whom the provider is providing services.

(b) The office of public instruction shall provide a list of tools to educators or providers of school-based services to track the language development of a deaf or hard-of-hearing child receiving services.

~~(5)~~*(7) (a)* The department *and the office of public instruction* shall *each* prepare an annual report, using existing data that is reported in compliance with federal requirements *for children receiving Part B and Part C services*, regarding ~~the~~ language ~~and literacy~~ development in deaf and hard-of-hearing children from birth ~~to 3~~ *through 8* years of age *relative to their peers who are not deaf or hard of hearing*.

(b) The report must include, as applicable to each agency:

(i) the total number of children receiving Part B and Part C services;

(ii) the total number of children assessed for language development;

(iii) the languages in which children were assessed and the number of children assessed in each language;

(iv) the number of children who were and were not within age-appropriate development ranges based on their chronological age;

(v) information on how the ratings included in the report were developed;

(vi) for each assessment conducted, the tool that was used for the assessment; and

(vii) the number of assessment proctors whose qualifications as established by the producer of the assessment tool were verified by both the parent or guardian and the department or the office of public instruction.

(c) ~~The department~~ *Each agency* shall make ~~the~~ *its* report available on its website *along with the name and contact information of the person who prepared the report*.

(8) A parent pursuing an indigenous language for a child may opt out of the evaluation and assessment required under this part."

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 52, chapter 2, part 9, and the provisions of Title 52, chapter 2, part 9, apply to [sections 1 through 3].

Section 7. Effective date. [This act] is effective July 1, 2023.

Section 8. Termination. [Section 2] terminates June 30, 2025.

Approved May 18, 2023

CHAPTER NO. 522

[HB 622]

AN ACT PROVIDING FOR NONRESIDENT TITLING OF VEHICLES; PROVIDING THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT OF JUSTICE AUTHORITY AND LEGISLATIVE DIRECTION TO IMPLEMENT NONRESIDENT TITLING; AMENDING SECTION 61-3-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-3-201, MCA, is amended to read:

"**61-3-201. Certificate of title required -- *nonresident title* -- exclusions.** (1) Except as provided in subsection ~~(2)~~ *(3)*, the owner of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is in this state and for which a certificate of title has not been issued by or an electronic record of title has not been created by the department shall apply to the department, its authorized agent, or a county treasurer for a certificate of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(2) The department may determine requirements for nonresident businesses to apply for a title in this state and the department:

(a) may produce a title for nonresident business applicants;

(b) may enter a voluntary security interest or lien on the title in accordance with 61-3-103;

(c) is authorized to establish an application fee and title fee for nonresident applicants;

(d) shall require an applicant to submit a penalty bond of no less than $250,000 payable to the motor vehicle division, conditioned that the applicant will not commit fraud against any purchaser, seller, financial institution, the state, or any other state by using this section.

~~(2)~~*(3)* The following motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles are exempt from the requirements of this part:

(a) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owned by the United States, unless the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile is registered in this state;

(b) except as required in 61-4-111, a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is:

(i) owned by a manufacturer, a dealer, a wholesaler, or an auto auction; and

(ii) held for sale, even though incidentally moved on the highway, used for purposes of testing or demonstration, or used solely by a manufacturer for testing;

(c) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owned by a nonresident or a nonresident who has an interest in real property in Montana who chooses not to register a motor vehicle in this state as provided in 61-3-303;

(d) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile regularly engaged in the interstate transportation of persons or property and:

(i) for which a currently effective certificate of title has been issued in another state or jurisdiction; or

(ii) that is properly registered under the provisions of Title 61, chapter 3, part 7;

(e) a vehicle moved solely by human or animal power;

(f) an implement of husbandry;

(g) special mobile equipment or a motor vehicle or trailer designed and used to apply fertilizer to agricultural land;

(h) a self-propelled wheelchair or tricycle used by a person with a disability;

(i) a dolly or converter gear;

(j) a mobile home or housetrailer;

(k) a manufactured home declared to be an improvement to real property under 15-1-116; or

(l) a golf cart unless it is operated by a person with a low-speed restricted driver's license."

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

Approved May 18, 2023

CHAPTER NO. 523

[HB 631]

AN ACT CREATING THE GUN OWNERS ACCESS TO JUSTICE ACT; PROVIDING THAT THE RIGHT TO BEAR ARMS MAY NOT BE RESTRICTED BY THE STATE UNLESS A COMPELLING STATE INTEREST EXISTS; PROVIDING FOR A RIGHT TO A JUDICIAL PROCEEDING; PROVIDING FOR AN AWARD OF ATTORNEY FEES AND COSTS; AND PROVIDING DEFINITIONS.

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

Section 1. Short title. [Sections 1 through 3] may be cited as the "Gun Owners Access to Justice Act".

Section 2. Definitions. As used in [sections 1 through 3], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Burden" means to directly or indirectly constrain, inhibit, curtail, or deny a person's right to bear arms or to compel any action contrary to a person's right to bear arms. The term includes but is not limited to withholding benefits, excluding the person from government programs, and assessing criminal, civil, or administrative penalties.

(2) "Compelling state interest" means a government interest of the highest magnitude that cannot otherwise be achieved without burdening a person's right to bear arms.

(3) "Person" means an individual, association, partnership, corporation, estate, trust, foundation, or other legal entity.

(4) "Right to bear arms" means the right defined by Article II, section 12, of the Montana constitution.

(5) "State" means the state of Montana or any political subdivision or local government, municipality, or instrumentality of the state.

Section 3. Right to bear arms protected -- remedies. (1) The state may not burden a person's right to bear arms unless the state proves that burdening the person's right to bear arms furthers a compelling state interest and is the least restrictive means to further that interest.

(2) A person whose right to bear arms has been burdened by the state, or is likely to be burdened by the state, in violation of subsection (1) may assert the violation or impending violation as a claim or defense against the state in a judicial proceeding. The person asserting the claim or defense may obtain appropriate relief, including but not limited to injunctive relief, declaratory relief, and compensatory damages.

(3) A person who prevails on a claim to enforce the person's rights under Article II, section 12, of the Montana constitution or [sections 1 through 3] must be awarded reasonable attorney fees and costs.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 49, chapter 1, part 2, and the provisions of Title 49, chapter 1, part 2, apply to [sections 1 through 3].

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 18, 2023

CHAPTER NO. 524

[HB 656]

AN ACT REVISING COAL RECLAMATION LAWS; CREATING A PROCESS FOR MINOR REVISIONS; AMENDING SECTIONS 82-4-203, 82-4-221, AND 82-4-225, MCA; AND PROVIDING A CONTINGENT TERMINATION DATE.

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

Section 1. Minor revisions -- application -- exemptions. (1) During the term of a permit, the permittee may apply to the department to revise the permit and reclamation plan. Major revisions are subject to the provisions of 82-4-225.

(2) An application for a minor revision must:

(a) summarize proposed changes in sufficient detail for the department to determine that reclamation required under state and federal law will be accomplished;

(b) contain evidence that the changes in disturbed acres are insignificant in impact relative to the entire operation;

(c) identify previous environmental analyses relevant to the revision and demonstrate that the minor revision does not significantly change the human environment;

(d) document the adequacy of existing bonding; and

(e) include evidence that the permittee provided notice of the application for permit revision to the affected surface owner.

(3) Minor revisions are not subject to 82-4-231 and are exempt from the provisions of Title 75, chapter 1, parts 1 and 2.

(4) The department shall:

(a) notify the permittee if the minor revision application is adequate within 30 days of receipt; and

(b) approve the application within 60 days of the date the applicant is notified the application is adequate, provided the department determines the minor revision meets the requirements of this section and ensures adequate reclamation. Upon agreement of the permittee and the department, the period may be extended 30 days.

Section 2. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) "Affected drainage basin" means an area of land where surface water and ground water quality and quantity are affected by mining activities and where they drain to a common point.

(4) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(5) "Amendment" means a change in the mine or reclamation plan that increases the operation's permitted boundaries. The term includes major revisions but does not include incidental boundary revisions or minor revisions.

~~(5)~~*(6)* "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

~~(6)~~*(7)* "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

~~(7)~~*(8)* (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

~~(8)~~*(9)* "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

~~(9)~~*(10)* "Board" means the board of environmental review provided for in 2-15-3502.

~~(10)~~*(11)* "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(11)~~*(12)* (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(12)~~*(13)* "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

~~(13)~~*(14)* "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(14)~~*(15)* "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(15)~~*(16)* "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(16)~~*(17)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(17)~~*(18)* "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

~~(18)~~*(19)* "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(19)~~*(20)* "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(20)~~*(21)* "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

~~(21)~~*(22)* "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

~~(22)~~*(23)* "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

~~(23)~~*(24)* "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

~~(24)~~*(25)* "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

~~(25)~~*(26)* "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

~~(26)~~*(27)* "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(28) "Incidental boundary revision" means a change in the permit boundary necessary for reasons unforeseen in the original permit application that is small in relation to the original or amended permit area with insignificant impacts relative to the entire operation.

~~(27)~~*(29)* "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

~~(28)~~*(30)* (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

(b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated by the board of oil and gas conservation pursuant to Title 82, chapter 11.

~~(29)~~*(31)* "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

~~(30)~~*(32)* "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

(33) "Major revision" means a change in the mining or reclamation plan that:

(a) significantly changes the postmining drainage plan, the overall postmining land use, or the bonding level of the permitted area; or

(b) adversely affects the reclaimability of the area or the hydrologic balance on or off the permitted area.

~~(31)~~*(34)* "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

~~(32)~~*(35)* "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

~~(33)~~*(36)* "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(34)~~*(37)* "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(35)~~*(38)* "Mineral" means coal and uranium.

(39) "Minor revision" means a change to the mining or reclamation plan that increases the area of land affected by mining activities within a permitted area by a total of less than 320 acres from the amount initially approved and does not significantly increase the impact of the permitted disturbance. The term includes expansion into an adjacent permitted area provided the expansion does not significantly increase the impact from either permitted area.

~~(36)~~*(40)* "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(37)~~*(41)* "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

~~(38)~~*(42)* "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

~~(39)~~*(43)* "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

~~(40)~~*(44)* "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(41)~~*(45)* "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(42)~~*(46)* "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(43)~~*(47)* "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(44)~~*(48)* "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

~~(45)~~*(49)* "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

~~(46)~~*(50)* "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

~~(47)~~*(51)* "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(48)~~*(52)* "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(49)~~*(53)* "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

~~(50)~~*(54)* "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(51)~~*(55)* (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(52)~~*(56)* "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(53)~~*(57)* "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

~~(54)~~*(58)* "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(55)~~*(59)* "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

~~(56)~~*(60)* "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(57)~~*(61)* "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(58)~~*(62)* "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(59)~~*(63)* "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 3. Section 82-4-221, MCA, is amended to read:

"**82-4-221. Mining permit required.** (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must

terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at the time the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of each permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person must be allowed to accompany the inspector during the inspection.

(3) ~~During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision must be approved or disapproved within a reasonable time, depending on the scope and complexity, but within 60 days, which may be extended by an additional 30 days by mutual agreement of the department and the applicant.~~ Applications for major revisions are subject to all the permit application requirements and procedures."

Section 4. Section 82-4-225, MCA, is amended to read:

"**82-4-225. Application for ~~increase or reduction in~~ permit area *amendment.*** *(1)* ~~The department may increase or reduce the area of land affected by an operation under a permit on application by an operator,~~ *A permittee may apply to increase the permit boundary* but an increase may not extend the period for which an original permit was issued. ~~An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it.~~ The operator shall file an *amendment* application and map in the same form and with the same content as required for an original application under this part and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the *permit* area ~~of land affected~~, except for incidental boundary revisions *and minor revisions*.

(2) If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but the bond may not be reduced below $10,000, except as provided in 82-4-223."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 1].

Section 6. Contingent termination. [This act] terminates on the date that the department of environmental quality certifies to the code commissioner that the office of surface mining of the United States department of the interior

disapproves the changes to Montana's program that are provided in [this act]. The department of environmental quality shall submit certification within 60 days of the occurrence of the contingency.

Approved May 18, 2023

CHAPTER NO. 525

[HB 668]

AN ACT REVISING LAWS RELATED TO SERVICE CONTRACTS TO INCLUDE VEHICLE THEFT PROTECTION PRODUCTS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR CONDUCTING BUSINESS; PROVIDING FOR DISCLOSURES; PROVIDING THAT CERTAIN VEHICLE THEFT PROTECTION PRODUCTS AND SERVICE CONTRACTS ARE NOT SUBJECT TO THE INSURANCE CODE; PROVIDING DISCLOSURES FOR VEHICLE THEFT PROTECTION PRODUCT WARRANTIES; AND AMENDING SECTIONS 30-14-1301, 30-14-1302, 30-14-1303, AND 33-1-102, MCA.

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

Section 1. Section 30-14-1301, MCA, is amended to read:

"**30-14-1301. Definitions.** As used in this part, the following definitions apply:

(1) "Administrator" means the person who is responsible for the administration of service contracts.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "Incidental costs" means expenses specified in a vehicle theft protection product warranty that are incurred by the vehicle theft protection product warranty holder due to the failure of a vehicle theft protection product to perform as provided in the contract. Incidental costs may include but are not limited to insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the vehicle theft protection product warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder.

~~(3)~~*(4)* "Person" means an individual, partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint-stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

~~(4)~~*(5)* "Provider" means a person who is contractually obligated to the service contract holder *or vehicle theft protection product warranty holder* under the terms of the service contract *or vehicle theft protection product warranty*.

~~(5)~~*(6)* "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

~~(6)~~*(7) "Road hazard" means a hazard that is encountered while driving a motor vehicle, including but not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.*

(8) (a) "Service contract" ~~has the meaning provided in 33-1-102(10)(b)~~ *means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling.*

(b) The term includes a contract or agreement sold for a separately stated consideration for a specific duration that provides for any of the following:

(i) the repair or replacement of tires and wheels on a motor vehicle damaged as a result of coming into contact with a road hazard;

(ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without sanding, bonding, painting, or replacing a vehicle body panel;

(iii) the repair of small motor vehicle windshield chips or cracks, which may include replacement of the windshield for chips or cracks that cannot be repaired;

(iv) the replacement of one or more motor vehicle keys or key fobs in the event that the key or key fob becomes inoperable, lost, or stolen;

(v) in conjunction with a motor vehicle leased for use, the repair, replacement, or maintenance of property, or indemnification for repair, replacement, or maintenance of property, due to any of the following that result in a lease-end charge or any other charge for damage that is deemed as excess wear and use by a lessor under a motor vehicle lease, provided any payment may not exceed the purchase price of the vehicle:

(A) excess wear and use;

(B) damage for items such as tires, paint cracks or chips, interior stains, rips or scratches, exterior dents or scratches, windshield cracks or chips, missing interior or exterior parts; or

(C) excess mileage; or

(vi) other services that may be approved by the department, if not inconsistent with the provisions of this title.

(c) The term does not include a motor club service as defined in 61-12-301.

~~(7)~~*(9)* "Service contract holder" or "contract holder" means the person who is the purchaser or holder of a service contract.

(10) (a) "Vehicle theft protection product" means a device or system that:

(i) is installed on or applied to a motor vehicle;

(ii) is designed to prevent loss or damage to a motor vehicle from theft; and

(iii) includes a vehicle theft protection product warranty.

(b) The term does not include fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system or to interior or exterior surfaces of a motor vehicle.

(11) "Vehicle theft protection product warranty" means a written agreement by a warrantor that provides that if the vehicle theft protection product fails to prevent loss or damage to a motor vehicle from theft, then the warrantor will pay to or on behalf of the vehicle theft protection product warranty holder specified incidental costs as a result of the failure of the vehicle theft protection product to perform pursuant to the terms of the written agreement.

(12) "Vehicle theft protection product warranty holder" or "warranty holder" means the person who is the purchaser of a vehicle theft protection product and the holder of a vehicle theft protection product warranty."

Section 2. Section 30-14-1302, MCA, is amended to read:

"**30-14-1302. Requirements for conducting business.** (1) A provider may appoint an administrator or other designee to be responsible for any or all of the administration of service contracts *or vehicle theft protection product warranties* in compliance with this part.

(2) Service contracts *or vehicle theft protection product warranties* may not be issued, sold, or offered for sale in the state unless the provider complies with the requirements of one of the following three provisions:

(a) insures all service contracts *or vehicle theft protection product warranties* under a reimbursement insurance policy issued by an insurer that is licensed, registered, or otherwise authorized to do business in the state and either:

(i) at the time the policy is issued and during the duration of the policy, maintains a surplus as to policyholders and paid-in capital of at least $15 million and annually files copies of the insurer's financial statements, its national association of insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer's state of domicile; or

(ii) at the time the policy is issued and during the duration of the policy, maintains a surplus as to policyholders and paid-in capital of less than $15 million but at least equal to or greater than $10 million and:

(A) upon request of the department, demonstrates that the company maintains a ratio of net written premiums, whenever written, to surplus as to policyholders and paid-in capital of not greater than 3-to-1; and

(B) annually files copies of the insurer's audited financial statements, its national association of insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer's state of domicile;

(b) (i) maintains a funded reserve account, which may be subject to examination and review by the department, for its obligations under its contracts issued and outstanding in this state, the reserves of which may not be less than 40% of gross consideration received, less claims paid, on the sale of the service contract *or vehicle theft protection product warranty* for all service contracts *or vehicle theft protection product warranties* issued and in force;

(ii) maintains a financial security deposit having a value of not less than 5% of the gross consideration received, less claims paid, on the sale of the service contract *or vehicle theft protection product* for all service contracts *or vehicle theft protection product warranties* issued and in force, but not less than $25,000 and consisting of one of the following:

(A) a surety bond issued by an authorized surety;

(B) securities of the type eligible for deposit by authorized insurers in this state;

(C) cash; or

(D) a letter of credit issued by a qualified financial institution; or

(c) maintains, either alone or with its parent company, a net worth of stockholders' equity of $100 million and provides the department, upon request, with:

(i) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the securities and exchange commission within the last calendar year; or

(ii) if the company does not file with the securities and exchange commission, a copy of the company's audited financial statements showing a net worth of the provider or its parent company of at least $100 million.

(3) If information requested in subsection (2)(c)(i) or (2)(c)(ii) comes from the provider's parent company, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(4) Except for the requirements provided in subsection (2), no other financial security requirements may be required.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts *or vehicle theft protection products* by the providers and related service contract *or vehicle theft protection product* sellers, administrators, and other persons are exempt from all provisions in Title 33, as provided in 33-1-102(10)~~(a)~~."

Section 3. Section 30-14-1303, MCA, is amended to read:

"**30-14-1303. Required disclosures -- reimbursement insurance policy.** (1) Reimbursement insurance policies insuring service contracts *or vehicle theft protection product warranties* issued, sold, or offered for sale in this state must state that the insurer that issued the reimbursement insurance policy shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or, in the event of the provider's nonperformance, shall provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts *or vehicle theft protection product warranties* issued or sold by the provider.

(2) If covered service is not provided by the provider within 60 days of proof of loss by the service contract holder *or vehicle protection product warranty holder*, the contract holder *or warranty holder* is entitled to apply directly to the reimbursement insurance company."

Section 4. Required disclosure -- vehicle theft protection product warranties. (1) Vehicle theft protection product warranties offered, issued, made, proposed to be made, or administered in this state must be written, printed, or typed in clear, understandable language that is easy to read and must disclose the following, as applicable:

(a) the name and address of the warrantor, the seller of the vehicle theft protection product, and the vehicle theft protection product warranty holder;

(b) the total purchase price of the vehicle theft protection product and the terms under which it is to be paid, however, the purchase price is not required to be preprinted on the vehicle theft protection product warranty and may be negotiated with the consumer at the time of sale;

(c) the procedure for making a claim, including a telephone number for the warrantor or administrator responsible for processing the claim;

(d) the payments or performance to be provided under the warranty, including payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions, or exclusions. Incidental costs may be reimbursed under the provisions of the warranty in either a fixed amount specified in the warranty or sales agreement or by the use of a formula itemizing specific incidental costs incurred by the vehicle theft protection product warranty holder.

(e) the obligations and duties of the vehicle theft protection product warranty holder, such as the duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair, or other similar requirements, if any;

(f) any terms, restrictions, or conditions governing transferability and cancellation of the warranty, if any. A warrantor may only cancel a vehicle theft protection product warranty if the vehicle theft protection product warranty holder does any of the following:

(i) fails to pay for the vehicle theft protection product;

(ii) makes a material misrepresentation to the seller of the vehicle theft protection product or to the warrantor;

(iii) commits fraud related to the purchase of the vehicle theft protection product, registration of the vehicle theft protection product warranty, or a claim made under the vehicle theft protection product warranty;

(iv) substantially breaches the vehicle theft protection product warranty holder's duties under the warranty;

(v) fails to make required payments on the vehicle so that the vehicle is repossessed; and

(vi) damages the vehicle in such a way so that the vehicle is considered a total loss.

(2) A vehicle theft protection product warranty that is insured by a reimbursement insurance policy pursuant to 30-14-1302(2)(a) must contain the following items:

(a) a statement that is in a form identical or similar to the following: "This contract is not insurance and is not subject to the insurance laws of this state";

(b) that the obligations of the warrantor are insured under a reimbursement insurance policy;

(c) that if a warrantor fails to perform or make a payment due under the terms of the warranty within 60 days after the vehicle theft protection product warranty holder requests performance or payment pursuant to the terms of the warranty, the vehicle theft protection product warranty holder may request performance or payment directly from the warrantor's reimbursement insurance policy insurer; and

(d) the name, address, and telephone number of the warrantor's reimbursement insurance policy insurer.

(3) Vehicle theft protection product warranties not insured under a reimbursement insurance policy pursuant to 30-14-1302(2)(a) must contain a statement that is in a form identical or similar to the following: "The obligations of the warrantor under this warranty are backed by the full faith and credit of the warrantor".

Section 5. Section 33-1-102, MCA, is amended to read:

"**33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, part 21, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) ~~(a)~~ This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract *governed by Title 30, chapter 14, part 13.*

~~(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.~~

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) Except as provided in 33-2-2212, this code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by Title 30, chapter 14, part 22*, or to vehicle theft protection products or vehicle theft protection product warranties that are governed by Title 30, chapter 14, part 13.*

(15) This code does not apply to direct patient care agreements established pursuant to 50-4-107.

(16) This code does not apply to a health care sharing ministry that meets the requirements of 50-4-111."

Section 6. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 30, chapter 14, part 13, and the provisions of Title 30, chapter 14, part 13, apply to [section 4].

Approved May 18, 2023

CHAPTER NO. 526

[HB 674]

AN ACT CREATING AN ENHANCED PERMIT TO CARRY A CONCEALED WEAPON; PROVIDING APPLICATION CRITERIA AND INSTRUCTIONS FOR APPLICANTS AND COUNTY SHERIFFS; CREATING A PERMIT RENEWAL PROCESS; SPECIFYING WHO MAY NOT HOLD AN ENHANCED PERMIT; PROVIDING FOR A TEMPORARY RESTRICTED ENHANCED PERMIT FOR INDIVIDUALS WHO ARE 18 TO 20 YEARS OF AGE; AMENDING SECTIONS 45-8-328, 45-8-330, AND 45-8-356, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Enhanced permit to carry concealed weapon -- temporary restricted enhanced permit for individuals 18 to 20 years of age. (1) To obtain an optional enhanced permit to carry a concealed weapon, an applicant shall submit an application to the sheriff of the county in which the applicant resides. The permit is valid for 5 years from the date of issuance and may be renewed pursuant to subsection (6).

(2) An application for an enhanced permit must include:

(a) a copy of the applicant's fingerprints for submission to the federal bureau of investigation, or to any government agency or entity authorized to receive the information, for a state, national, and international criminal background check;

(b) an authorization from the applicant to run a fingerprint background check; and

(c) proof that the applicant:

(i) has successfully completed a qualifying handgun course, as defined in subsection (5), within the preceding 12 months; or

(ii) is a current or former law enforcement officer and has, within the preceding 12 months, qualified or requalified on a certified shooting course administered by a firearms instructor approved by a law enforcement agency.

(3) An applicant for an enhanced concealed carry permit must be:

(i) a United States citizen or permanent lawful resident;

(ii) 21 years of age or older;

(iii) the holder of a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified; and

(iv) a resident of the state for at least 6 months on the date of application.

(4) A county sheriff who receives an application for an enhanced permit to carry a concealed weapon shall:

(a) conduct or cause to be conducted the criminal background checks required pursuant to subsection (2);

(b) retain the application and other documents until the sheriff receives the results of the background checks required pursuant to subsection (2); and

(c) after receiving satisfactory background check results and verification that an applicant has met the requirements of subsection (2)(c)(i) or (2)(c)(ii) and subsection (3), issue a permit clearly designated as enhanced within 60 days after the filing of the application.

(5) A qualifying handgun course is any handgun course approved by a law enforcement agency that includes instruction in each of the following:

(a) laws relating to firearms and the use of force;

(b) the basic concepts of the safe and responsible use of handguns;

(c) self-defense principles; and

(d) live fire training, including the firing of at least 98 rounds of ammunition by the student.

(6) A person who holds an enhanced permit to carry a concealed weapon may renew the permit through the sheriff of the county in which the person resides. The period for renewal begins 180 days before the permit expires and ends 30 days after the permit expires. To renew an enhanced permit, a person shall:

(a) pass a criminal background check; and

(b) present proof that:

(i) during the period of renewal, the applicant successfully completed a live fire component of a qualifying handgun course pursuant to subsection (5)(d); or

(ii) the applicant is a current or former law enforcement officer and has, within the preceding 12 months, qualified or requalified on a certified shooting course administered by a firearms instructor approved by a law enforcement agency.

(7) (a) If a person fails to renew an enhanced permit to carry a concealed weapon during the period set forth in subsection (6), the enhanced permit is deemed to be invalid.

(b) To obtain an enhanced permit after a previous enhanced permit has become invalid, a person shall submit a new application and meet all requirements for an initial enhanced permit.

(8) Except as provided in subsection (9), an enhanced permit to carry a concealed weapon may not be denied to a qualified applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) subject to the provisions of subsection (10), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration; or

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or

deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally disordered, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(9) A county sheriff may deny an applicant an enhanced permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally disordered, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause on which the denial is based.

(10) Except for a person referred to in subsection (8)(c)(ii), a person who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of an enhanced concealed weapons permit if otherwise eligible.

(11) The fee for issuance of an enhanced permit is $75. The fee for an enhanced permit must be paid to the county sheriff. The county sheriff shall forward the appropriate amount of the fee to the department of justice to cover the costs of background checks and fingerprinting.

(12) The sheriff of the county in which the permittee resides may revoke the enhanced permit or deny its renewal under 45-8-323.

(13) A denial or revocation of an enhanced permit or a refusal to renew an enhanced permit may be appealed under 45-8-324.

(14) The immunity from liability provided under 45-8-326 applies to the grant of, renewal of, or failure to revoke an enhanced permit.

(15) (a) An applicant between 18 and 20 years of age who otherwise meets the requirements of subsections (2) and (3) and any other specified requirements and qualifications, on approval from the sheriff of the county where the applicant submitted the application, must be issued a temporary restricted enhanced permit that clearly designates the restricted enhanced permit is for individuals who are 18 to 20 years of age.

(b) An individual holding an unexpired restricted enhanced permit who has reached the age of 21 may submit a written request to the sheriff of the county in which the individual resides for an unrestricted enhanced permit. The unrestricted enhanced permit must be issued at no additional cost.

Section 2. Section 45-8-328, MCA, is amended to read:

"**45-8-328. Carrying concealed weapon in prohibited place -- penalty.** (1) Except for a person issued a permit pursuant to 45-8-321 *or [section 1]* or a person recognized pursuant to 45-8-329, a person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in portions of a building used for state or local government offices and related areas in the building that have been restricted.

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

Section 3. Section 45-8-330, MCA, is amended to read:

"**45-8-330. (Temporary) Exemption of concealed weapon permittee from federal handgun purchase background check and waiting period.** A person possessing a concealed weapon permit *or an enhanced concealed weapon permit* is:

(1) considered to have a permit constituting completion of the background check required by 18 U.S.C. 921 through 925A; and

(2) exempt from that act's 5-day waiting period for the purchase of a handgun. (Subsections (1) and (2) terminate contingent on the elimination of federal statutory or case law requirements--sec. 5, Ch. 408, L. 1995.)"

Section 4. Section 45-8-356, MCA, is amended to read:

"**45-8-356. Where concealed weapon may be carried -- exceptions.** A person with a current and valid permit issued pursuant to 45-8-321 *or [section 1]* or recognized pursuant to 45-8-329 may not be prohibited or restricted from exercising that permit anywhere in the state, except:

(1) in a correctional, detention, or treatment facility operated by or contracted with the department of corrections or a secure treatment facility operated by the department of public health and human services;

(2) in a detention facility or secure area of a law enforcement facility owned and operated by a city or county;

(3) at or beyond a security screening checkpoint regulated by the transportation security administration in a publicly owned, commercial airport;

(4) in a building owned and occupied by the United States;

(5) on a military reservation owned and managed by the United States;

(6) on private property where the owner of the property or the person who possesses or is in control of the property, including a tenant or lessee of the property, expressly prohibits firearms;

(7) within a courtroom or an area of a courthouse in use by court personnel pursuant to an order of a justice of the peace or judge; or

(8) in a school building as determined by a school board pursuant to 45-8-361."

Section 5. 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 6. Effective date. [This act] is effective on passage and approval.

Approved May 18, 2023

CHAPTER NO. 527

[HB 676]

AN ACT GENERALLY REVISING LAWS REGARDING FUNDAMENTAL PARENTAL RIGHTS; SPECIFYING THAT FUNDAMENTAL PARENTAL RIGHTS ARE EXCLUSIVELY RESERVED TO THE PARENT OF A CHILD WITHOUT OBSTRUCTION OR INTERFERENCE FROM A GOVERNMENT ENTITY; PROVIDING PARENTAL RIGHTS AND RESPONSIBILITIES; PROHIBITING MEDICAL CARE FOR A CHILD WITHOUT PARENTAL CONSENT SUBJECT TO EXCEPTIONS; AMENDING SECTIONS 40-6-701, 41-1-402, 41-1-403, 41-1-405, AND 41-1-407, MCA; REPEALING SECTION 41-1-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 40-6-701, MCA, is amended to read:

"**40-6-701. Interference with fundamental parental rights restricted -- cause of action.** (1) A ~~governmental~~ *government* entity may not interfere with the fundamental right of parents to direct the upbringing,

education, health care, and mental health of their children unless the ~~governmental~~ *government* entity demonstrates that the interference:

(a) furthers a compelling governmental interest; and

(b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest.

(2) All fundamental parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following:

(a) direct the education of the child, including the right to choose public, private, religious, or home schools and the right to make reasonable choices with public schools for the education of the child;

(b) access and review all written and electronic education records relating to the child that are controlled by or in the possession of a school;

(c) direct the upbringing of the child;

(d) direct the moral or religious training of the child;

(e) make and consent to all physical and mental health care decisions for the child;

(f) access and review all health and medical records of the child;

(g) consent before a biometric scan of the child is made, shared, or stored;

(h) consent before a record of the child's blood or DNA is created, stored, or shared, unless authorized pursuant to a court order;

(i) consent before a government entity makes an audio or video recording of the child, unless the audio or video recording is made during or as part of:

(i) a court proceeding;

(ii) a law enforcement investigation;

(iii) a forensic interview in a criminal or child abuse and neglect investigation;

(iv) the security or surveillance of buildings grounds, or transportation of students; or

(v) a photo identification card;

(j) be notified promptly if an employee of a government entity suspects that abuse, neglect, or a criminal offense has been committed against the child unless the parent is suspected to have caused the abuse;

(k) opt the child out of any personal analysis, evaluation, survey, or data collection by a school district that would capture data for inclusion in the statewide data system except data that is necessary and essential for establishing a student's education record;

(l) have the child excused from school attendance for religious purposes;

(m) participate in parent-teacher associations and school organizations that are sanctioned by the board of trustees of a school district; and

(n) be notified promptly if, and provide consent before, the child would share a room or sleeping quarters with an individual of the opposite sex on a school-sponsored trip. A child whose parent does not provide consent must be permitted to attend the trip and must be provided with reasonable accommodations that do not require the child to share a room or sleeping quarters with an individual of the opposite sex.

(3) Except for law enforcement, an employee of a government entity may not encourage or coerce a child to withhold information from the child's parent and may not withhold from a child's parent information that is relevant to the physical, emotional, or mental health of a child.

~~(2)~~*(4)* This section may not be construed as invalidating the provisions of Title 41, chapter 3, or modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

~~(3)~~*(5)* When a parent's fundamental rights protected by ~~this section~~ *[section 2], [section 3], 41-1-402, 41-1-403, 41-1-405, and this section* are violated, a

parent may assert that violation as a claim or defense in ~~a~~ *an administrative or* judicial proceeding and may obtain appropriate relief ~~against the governmental entity~~ *without regard to whether the proceeding is brought by or in the name of a government entity, a private person, or any other party*. The prevailing party in an action filed pursuant to ~~this section~~ *[section 2], [section 3], 41-1-402, 41-1-403, 41-1-405, and this section* is entitled to reasonable attorney fees and costs.

~~(4)~~*(6)* As used in this section, *the following definitions apply:*

(a) "Child" means an individual under 18 years of age.

(b) "Education record" means attendance records, test scores of school-administered tests and statewide assessments, grades, school-sponsored or extracurricular activity or club participation, email accounts, online or virtual accounts or data, disciplinary records, counseling records, psychological records, applications for admission, health and immunization information including any medical records maintained by a health clinic or medical facility operated or controlled by the school district or located on the district property, teacher and counselor evaluations, and reports of behavioral patterns.

(c) ~~"governmental entity" has the meaning provided in 2-9-101.~~ *"Government entity" means the state, its political subdivisions, or any department, agency, commission, board, authority, institution, or office of the state, including a municipality, county, consolidated municipal-county government, school district, or other special district.*

(d) "Parent" means a biological parent of a child, an adoptive parent of a child, or an individual who has been granted the exclusive right and authority over the welfare of a child under state law.

(e) "Substantial burden" means an action that directly or indirectly constrains, inhibits, curtails, or denies the right of a parent to direct the upbringing, education, health care, and mental health of the parent's child. The term includes but is not limited to:

(i) withholding benefits;

(ii) assessing criminal, civil, or administrative penalties; or

(iii) exclusion from a government program."

Section 2. Medical care for children. (1) (a) Except as otherwise provided by Title 41, chapter 1, part 4, or court order, a person, corporation, association, organization, state-supported institution, or individual employee of a corporation, association, organization, or state-supported institution may not:

(i) procure, solicit to perform, arrange to perform, or perform surgical procedures on a child;

(ii) procure, solicit to perform, arrange to perform, or perform a physical examination on a child;

(iii) prescribe or dispense a prescription drug to a child;

(iv) procure, solicit to perform, arrange to perform, or perform a mental health evaluation in a clinical or nonclinical setting on a child; or

(v) procure, solicit to perform, arrange to perform, or perform a mental health treatment on a child.

(b) The prohibitions in subsection (1)(a) do not apply of if the parent of the child has provided consent for the medical care to be provided. If the parental consent is given through telemedicine, the health professional shall verify the identity of the parent at the site where the consent is given.

(2) Unless a parent's decisionmaking rights have been limited by court order, a hospital, as defined in 50-5-101, is prohibited from allowing a surgical procedure to be performed on a child in its facilities unless the hospital has first received consent from a parent of the child.

(3) The provisions of this section do not apply when a physician determines that an emergency exists and that it is necessary to perform an activity described in subsection (1)(a) to prevent death or imminent, irreparable physical injury to a child or when a parent cannot be located or contacted after a reasonably diligent effort.

(4) The provisions of this section do not apply to an abortion, which is governed by the provisions of Title 50, chapter 20.

Section 3. Construction. (1) Unless a right has been legally waived or legally terminated, a parent has inalienable rights that are more comprehensive than those listed in 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section. The protections afforded by 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section are in addition to the protections provided by the constitutions of the United States and the state of Montana and by federal and state law.

(2) Sections 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section must be construed in favor of a broad protection of the fundamental right of parents to direct the upbringing, education, health care, and mental health of their child.

(3) Sections 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section may not be construed to authorize any government entity to burden the fundamental right of parents to direct the upbringing, education, health care, and mental health of their child.

(4) If a child has no affirmative right of access to a particular medical or mental health procedure or service, then nothing in 40-6-701, [section 2], 41-1-402, 41-1-403, 41-1-405, and this section may be construed to grant the child's parent an affirmative right of access to the procedure or service on the child's behalf.

Section 4. Section 41-1-402, MCA, is amended to read:

"**41-1-402. Validity of consent of minor for health services.** (1) This part does not limit the right of an emancipated minor to consent to the provision of health services or to control access to protected health care information under applicable law.

(2) The consent to the provision of health services and to control access to protected health care information by a health care facility or to the performance of health services by a health professional may be given by a minor ~~who professes or is found to meet~~ *when the health professional, in good faith and with a reasonable belief supported by fact, determines that the minor meets* any of the following descriptions:

(a) ~~a minor who~~ *the minor* professes to be or to have been married or to have had a child or *to have* graduated from high school;

(b) ~~a minor who~~ *the minor* professes to be or is found to be separated from the minor's parent, parents, or legal guardian for whatever reason and is providing self-support by whatever means;

(c) ~~a minor who~~ *the minor* professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection *(2)(c)*. The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance abuse also obliges the health professional, if the health professional accepts the responsibility for treatment, to counsel the minor or to refer the minor to another health professional for counseling.

(d) ~~a minor who~~ *the minor* needs emergency care, including transfusions, ~~without which the minor's health will be jeopardized~~ *necessary to prevent*

serious injury or harm to the minor. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon as practical except under the circumstances mentioned in this subsection (2).

(3) A minor who has had a child may give effective consent to health service for the child.

(4) A minor may give consent for health care for the minor's spouse if the spouse is unable to give consent by reason of physical or mental incapacity."

Section 5. Section 41-1-403, MCA, is amended to read:

"**41-1-403. Release of information by health professional.** (1) Except with regard to an emancipated minor, a health professional ~~may~~ *shall* inform the parent, custodian, or guardian of a minor in the circumstances enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) informing them would benefit the minor's physical and mental health and family harmony; or

(e) the health professional or health care facility providing treatment desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the parent, parents, or legal guardian by the health professional may not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. If the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from drug abuse or substance abuse, including alcohol, then information with respect to any appointment, examination, test, or other health procedure may not be given to the parent, parents, or legal guardian, if they have not already been informed as permitted in this part, without the consent of the minor."

Section 6. Section 41-1-405, MCA, is amended to read:

"**41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith *and with a reasonable belief supported by fact*, the professional believes that the giving of aid is the only alternative to probable death or ~~serious~~ *irreparable* physical ~~or mental~~ damage.

~~(2) A health professional may render nonemergency services to minors for conditions that will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.~~

~~(3)~~*(2)* Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who*, after a diligent search,* has no known relatives or legal guardians, if a physician determines that the health service ~~should be given~~ *is the only alternative to probable death or irreparable physical damage*.

~~(4)~~*(3)* Self-consent of minors does not apply to sterilization or abortion, except as provided in Title 50, chapter 20, part 5."

Section 7. Section 41-1-407, MCA, is amended to read:

"**41-1-407. Immunity and responsibility of ~~psychologist,~~ physician, or health care facility.** (1) A physician, surgeon, dentist, or health or mental

health care facility may not be compelled against the entity's best judgment to treat a minor on the minor's own consent.

(2) This section may not be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered a minor.

~~(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling services may not incur civil or criminal liability by reason of having provided the counseling services, but the immunity does not apply to any negligent acts or omissions.~~"

Section 8. Repealer. The following section of the Montana Code Annotated is repealed:

41-1-406. Psychiatric or psychological counseling under urgent circumstances.

Section 9. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 40, chapter 6, part 7, and the provisions of Title 40, chapter 6, part 7, apply to [sections 2 and 3].

Section 10. Effective date. [This act] is effective on passage and approval.

Approved May 18, 2023

CHAPTER NO. 528

[HB 679]

AN ACT REQUIRING CERTAIN VEHICLES TO CARRY TRACTION CONTROL DEVICES DURING WINTER MONTHS; PROVIDING A PENALTY; AND PROVIDING RULEMAKING AUTHORITY.

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

Section 1. Certain vehicles to carry tire traction devices during winter months. (1) (a) Except as provided in subsection (1)(b), from October 1 through April 30, a person operating a motor truck of 26,001 GVW or greater towing a trailer on a mountain pass or on a similar stretch of highway designated by the department of transportation as a place where traction control devices are potentially required shall carry in the vehicle approved traction control devices prescribed by the department.

(b) The requirement of subsection (1)(a) does not apply to a vehicle with four-wheel drive.

(2) A person who violates the provisions of this section shall be punished by a fine of $225 for a first offense and not less than $225 or more than $500 for subsequent offenses.

(3) The department may adopt administrative rules to implement this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [section 1].

Approved May 18, 2023

CHAPTER NO. 529

[HB 685]

AN ACT REVISING THE METHOD FOR APPRAISING CONDOMINIUMS FOR PROPERTY TAX PURPOSES; AMENDING SECTION 15-8-111, 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 15-8-111, MCA, is amended to read:

"**15-8-111. Appraisal -- market value standard -- exceptions.** (1) All taxable property must be appraised at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses the cost approach as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the income approach as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (4), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) (a) In valuing class four residential and commercial property described in 15-6-134, the department shall conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation. In valuing the property, the department shall use information available from any source considered reliable. Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued. The department shall use the same valuation method to value residential properties in the same neighborhood or subdivision unless there is a compelling reason to use a different approach.

(b) When valuing residential property under the cost approach, the department shall document why the comparable sales model does not support usage of the comparable sales approach, including an analysis of whether the cost approach is used for other class four residential property in the market area.

(4) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the market value for agricultural implements and machinery is the average wholesale value category as provided in published national agricultural and implement valuation guides. The valuation guide must provide average wholesale values specific to the state of Montana or a region that includes the state of Montana. The department shall adopt by rule the valuation guides used

as provided in this subsection (4)(a). If the average wholesale value category is unavailable, the department shall use a comparable wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide;

(c) (i) for condominium property, the department shall establish the value as provided in subsection (5); and

(ii) for a townhome or townhouse, as defined in 70-23-102, the department shall determine the value in a manner established by the department by rule; and

(d) as otherwise authorized in Titles 15 and 61.

(5) (a) Subject to subsection (5)(c), if sufficient, relevant information on comparable sales is available, the department shall use the sales comparison approach to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(b) Subject to subsection (5)(c), if sufficient, relevant information on income is made available to the department, the department shall use the income approach to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(c) If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the cost approach. When using the cost approach, the department shall ~~determine the value of the entire condominium project and allocate a percentage of the total value to each individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value~~ *value the units individually and allocate only the common area elements to the units based on the percentage of undivided interest in the condominium declaration*.

(6) For purposes of taxation, assessed value is the same as appraised value.

(7) The taxable value for all property is the market value multiplied by the tax rate for each class of property.

(8) The market value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at 100% of market value.

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(9) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(10) For the purpose of this section, the term "compelling reason" includes but is not limited to the following:

(a) there are no comparable sales in the neighborhood or subdivision;

(b) the comparable sales model prepared by the department shows that the subject property cannot be valued using the market sales approach; or

(c) other residential properties in the same neighborhood or subdivision are also valued using the cost approach and not the market sales approach."

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

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning January 1, 2023.

Approved May 18, 2023

CHAPTER NO. 530

[HB 689]

AN ACT REVISING LAWS RELATED TO PROBATION AND PAROLE; ELIMINATING THE REQUIREMENT TO USE COMPLIANCE OR NONCOMPLIANCE VIOLATIONS IN REQUESTS TO REVOKE PROBATION; AND AMENDING SECTION 46-18-203, MCA.

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

Section 1. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), ~~and describing the exhaustion and documentation in the offender's file of appropriate violation responses according to the incentives and interventions grid adopted under 46-23-1028,~~ the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay and no more than 60 days after arrest, the offender must be brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence ~~and the violation is not a compliance violation~~ *by committing either compliance violations, noncompliance violations, or both*, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions, which may include placement in:

(A) a secure facility designated by the department for up to 9 months; or

(B) a community corrections facility or program designated by the department for up to 9 months, including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program, enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety program;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and allow all of the elapsed time served without any record or recollection of violations as a credit against the sentence. If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.

(c) If the judge finds that the offender has not violated a term or condition of a suspended or deferred sentence, the judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

~~(8) (a) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have not been exhausted and documented in the offender's file, the judge shall notify the department and refer the matter back to the hearings officer.~~

~~(b) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have been exhausted and documented in the offender's file, the judge may:~~

~~(i) continue the suspended or deferred sentence without a change in conditions; or~~

~~(ii) continue the suspended or deferred sentence with modified or additional terms and conditions, which may include placement as provided in subsection (7)(a)(ii).~~

~~(c) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the offender's conduct indicates that the offender will not be responsive to further efforts under the incentives and interventions grid, the judge may sentence the offender as provided in subsection (7).~~

~~(9)~~*(8)* If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

~~(10)~~*(9)* All sanction and placement decisions must be documented in the offender's file.

~~(11)~~*(10)* As used in this section~~, the following definitions apply:~~*:*

~~(a) "Absconding"~~

(a) "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~~.~~*; and*

~~(b) "Compliance violation" means a violation of the conditions of supervision that is not:~~

~~(i) a new criminal offense;~~

~~(ii) possession of a firearm in violation of a condition of probation;~~

~~(iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network;~~

~~(iv) absconding; or~~

~~(v) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.~~

(b) "compliance violation" means a violation of the conditions of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network;

(iv) absconding; or

(v) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.

~~(12)~~*(11)* The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Approved May 18, 2023

CHAPTER NO. 531

[HB 697]

AN ACT GENERALLY REVISING LAWS RELATED TO THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; PROVIDING REPORTING REQUIREMENTS; REQUIRING AN INTERIM STUDY OF THE STAFFING, STRUCTURE, AND DUTIES OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; PROVIDING THAT CERTAIN SPECIAL REVENUE ACCOUNT FUNDS ARE USED TO SUPPORT THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; AMENDING SECTION 44-10-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Investigations report. Starting October 1, 2023, and each quarter after, the council shall provide a written report on pending investigations to the law and justice interim committee in accordance with 5-11-210. The report must protect the privacy rights of the individuals involved and must provide for each investigation:

(1) when it was opened;

(2) the process that remains to be completed; and

(3) the likely timing for resolution of the investigation.

Section 2. Interim study of POST council. (1) The law and justice interim committee established in 5-5-226 shall study the public safety officer standards and training council established in 2-15-2029 during the 2023-2024 interim. The study shall:

(a) examine the legislative history of the council's structure, staffing, and duties;

(b) review the current structure, staffing, and duties of the council;

(c) compare the council's current structure and administrative attachment to similar entities in other states; and

(d) provide recommendations to the 69th legislature for how the council should be structured and staffed.

(2) The law and justice interim committee shall consult with council members, council staff, the department of justice, local law enforcement agencies, and other stakeholders the committee considers necessary.

(3) All aspects of the study must be concluded by September 15, 2024. Final results of the study must be reported to the 69th legislature.

Section 3. Section 44-10-204, MCA, is amended to read:

"**44-10-204. Department of justice account established.** (1) There is an account in the state special revenue fund to be used by the department of justice on behalf of the Montana law enforcement academy~~;~~ established in 44-10-103 *and the Montana public safety officer standards and training council established in 2-15-2029*.

(2) Money in the account created in subsection (1) must be appropriated by the legislature for the purposes provided in Title 44, chapter 10, part 2, including use as matching funds for grants to be sought under 44-10-202(1)(j)."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 4, part 4, and the provisions of Title 44, chapter 4, part 4, apply to [section 1].

Section 5. Coordination instruction. If both House Bill No. 916 and [this act] are passed and approved and if House Bill No. 916 contains sections extending or repealing the termination date in section 23, Chapter 456, Laws of 2019, and section 19, Chapter 566, Laws of 2021, then those sections in House Bill No. 916 are void.

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

Section 7. Termination. [Section 2] terminates December 31, 2024.

Approved May 18, 2023

CHAPTER NO. 532

[HB 705]

AN ACT REQUIRING AN ACKNOWLEDGEMENT OF SUICIDE THROUGH LAW ENFORCEMENT INTERVENTION IN CORONER'S INQUEST CASES; AND AMENDING SECTION 46-4-205, MCA.

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

Section 1. Section 46-4-205, MCA, is amended to read:

"**46-4-205. Verdict of jury -- form.** The jury may view the body, and the county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies. After viewing the body and the death scene and hearing the testimony, the jury shall render its verdict, which must be by majority vote, and certify the verdict in writing signed by each juror. The verdict must set forth:

(1) who the deceased person is;

(2) when and where the deceased died;

(3) if the deceased died by criminal means; and

(4) if the deceased was killed or the deceased's death was occasioned by the act of another by criminal means, who committed the act, if known. If the jury finds that the death was not by criminal means, that fact must be stated on the verdict form.

(5) if evidence presented at the inquest supports a conclusion that the deceased engaged police in a deadly force encounter as a method of suicide, the jury shall indicate on the form that the deceased died by suicide through law enforcement intervention."

Approved May 18, 2023

CHAPTER NO. 533

[HB 706]

AN ACT ESTABLISHING THE MEDICAL PRACTICE PROTECTION ACT; PROHIBITING AN ACTION AGAINST A HEALTH CARE PROFESSIONAL FOR RECOMMENDING LAWFUL HEALTH SERVICES; AND CLARIFYING LIMITATIONS ON HEALTH INSURANCE COVERAGE AND HEALTH CARE FACILITY PROVISION OF RECOMMENDED SERVICES.

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

Section 1. Short title. [Sections 1 through 4] may be cited as the "Medical Practice Protection Act".

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Health care provider" means an individual licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(2) "Labeling" means any written material that accompanies, supplements, or explains a product.

(3) "Lawful health care service" means any health-related service or treatment that is not prohibited by law or regulation.

(4) "Off-label use" means any use of a prescription drug, biologic, approved medical device, or dietary supplement approved by the United States food and drug administration in a manner not specified in the labeling or indications for the product if the product is used for medical purposes.

(5) "Punish" means the imposition of any penalty, sanction, or disciplinary action to discourage the exercise of the right to freedom of speech under [sections 1 through 4].

(6) (a) "Unprofessional conduct" has the meaning provided in 37-1-316.

(b) The term does not include conduct by a health care provider who is acting within the minimum standards of practice as determined by the licensing board responsible for governing the health care provider's profession.

Section 3. Health care provider right to advise of lawful health services. (1) A health care provider may:

(a) make a patient aware of or educate or advise a patient about lawful health care services for which a reasonable basis exists, including the off-label use of health care services;

(b) make a patient aware of or educate or advise a patient about health care-related research or data; and

(c) offer, provide, or make available lawful health care services, including the off-label use of health care services as allowed under state law.

(2) (a) A state agency, a political subdivision of the state, or a private entity under contract with a health professional licensing board provided for in Title 37 may not punish a health care provider, directly or indirectly through a subcontractor or otherwise, for actions taken under this section.

(b) The prohibition on punishment includes an adverse licensure action.

(3) This section does not:

(a) prohibit a health professional licensing board from taking action if a health care provider commits unprofessional conduct arising outside of the actions specified in this section or provides health care services outside of the provider's scope of practice;

(b) impair a private health care entity from establishing standards of practice and communications standards for its employees;

(c) impair any right or limitation on medical liability; or

(d) prevent the reporting of an action to a health professional licensing board regarding medical liability cases, settlements, or decisions.

Section 4. Applicability to health insurance and health care facilities. The provisions of [sections 1 through 4] do not require:

(1) a health insurer to cover a lawful health service recommended or provided pursuant to [section 3]; or

(2) a health care facility providing care to a patient to provide a lawful health service recommended pursuant to [section 3].

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as a new part in Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 through 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 18, 2023

CHAPTER NO. 534

[HB 715]

AN ACT REVISING LAWS RELATED TO EXEMPTIONS TO SCHOOL IMMUNIZATION REQUIREMENTS; REQUIRING SCHOOLS TO PROVIDE INFORMATION ABOUT EXEMPTIONS TO IMMUNIZATION REQUIREMENTS; PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM ESTABLISHING EXEMPTION REQUIREMENTS BEYOND THOSE REQUIREMENTS EXPLICITLY STATED IN LAW; AMENDING SECTIONS 20-5-403 AND 20-5-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

(c) qualifies for conditional attendance; or

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

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

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

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

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

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

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

(4) Any communication from a school, including websites and social media postings, regarding the immunizations required under this section must include information about the exemptions available under 20-5-405, including copies of, or links to, exemption forms prescribed or developed by the department under 20-5-405."

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

"**20-5-405. Exemptions -- limitations on agency actions.** (1) (a) ~~There is a religious exemption to the immunizations required under 20-5-403.~~ *There is a religious exemption to the immunizations required under 20-5-403.* A person enrolled or seeking to enroll in school may attend the school without obtaining the immunizations *required under 20-5-403* if the person files with the governing authority ~~a notarized~~ *an* affidavit on a form prescribed by the department stating that ~~immunization is contrary to the religious tenets and practices of the signer~~ *immunization is contrary to the religious tenets and practices of the signer*.

(b) The statement must be signed:

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

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

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

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

(2) (a) There is a medical exemption to the immunizations required under 20-5-403. A person enrolled or seeking to enroll in school may attend the school without obtaining the immunizations if a written medical exemption statement signed by a health care provider specified in subsection (2)(c) is filed with the governing authority. The medical exemption statement must:

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

(ii) indicate the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization.

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

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

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

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

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

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

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

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

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

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

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

Section 3. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 535

[HB 729]

AN ACT PROVIDING FOR ADVANCED CONDUCTOR COST-EFFECTIVENESS CRITERIA; ALLOWING ADVANCED CONDUCTOR RATE BASING; PROVIDING A DEFINITION; AMENDING SECTION 69-3-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Criteria for allowable advanced conductor programs. (1) The commission may approve cost-effectiveness criteria for advanced conductor projects that may be placed into a utility's rate base under this part.

(2) Criteria must be based on established direct current resistance at standard pressure and a temperature of 20 degrees Celsius.

(3) As used in this section, "advanced conductor" means an overhead electricity conductor installed in a transmission or distribution project that has a direct current electrical resistance at least 10% lower than existing conductors of a similar diameter on the system.

(4) In establishing cost-effectiveness criteria, the commission may consider decreased electrical losses and any other relevant consumer, environmental, and system benefits provided by advanced conductors.

Section 2. Section 69-3-702, MCA, is amended to read:

"**69-3-702. Eligible conservation.** Conservation purchases or investments are eligible under this part if they are provided for in 69-3-1206 and in accordance with *[section 1] or* 69-3-1209."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 7, and the provisions of Title 69, chapter 3, part 7, apply to [section 1].

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

Approved May 18, 2023

CHAPTER NO. 536

[HB 743]

AN ACT REVISING LAWS RELATED TO INCEST; PROVIDING THAT NEPHEWS AND NIECES ARE INCLUDED IN THE PROHIBITED RELATIONSHIPS; AMENDING SECTION 45-5-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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, *a nephew or niece,* 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 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 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 2. Effective date. [This act] is effective on passage and approval.

Approved May 18, 2023

CHAPTER NO. 537

[HB 749]

AN ACT GENERALLY REVISING LAWS REGARDING THE MONTANA DIGITAL ACADEMY; REVISING THE PURPOSE OF THE MONTANA DIGITAL ACADEMY; PROVIDING NEW REQUIREMENTS AND PARAMETERS FOR REMOTE INSTRUCTION PROVIDED BY THE MONTANA DIGITAL ACADEMY; REVISING THE COMPOSITION AND THE MEMBERSHIP OF THE DIGITAL ACADEMY BOARD; CREATING THE MONTANA DIGITAL ACADEMY CLEARINGHOUSE; PROVIDING REQUIREMENTS FOR REMOTE INSTRUCTION OFFERINGS THROUGH THE CLEARINGHOUSE; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-1201, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-7-1201, MCA, is amended to read:

"**20-7-1201. Montana digital academy -- purposes -- governance.** (1) There is a Montana digital academy at a unit of the Montana university system. *The purpose of the Montana digital academy is to enhance the state's system of education and support the development of the full educational potential of each person consistent with the provisions of Article X, section 1(1), of the Montana constitution.*

(2) The ~~purposes of the~~ Montana digital academy ~~are to~~ *shall*:

(a) make ~~distance learning~~ *remote instruction* opportunities available to all school-age children through public school districts in the state ~~of Montana~~, *including students who are enrolled on a part-time basis. Remote instruction opportunities provided through the academy must include:*

(i) remote instruction developed in Montana and provided by highly qualified educators licensed in Montana; and

(ii) additional high-quality remote instruction offerings through the Montana digital academy clearinghouse under [section 2].

(b) ~~offer high-quality instructors who are licensed and endorsed in Montana and courses that are in compliance with all relevant education and distance learning rules, standards, and policies; and~~ *maximize access to high-quality remote instruction through flexibility in licensure and endorsement. Remote instructors may include teachers who are licensed and endorsed in Montana or elsewhere in the area of instruction taught. When the remote instructor is not licensed and endorsed in Montana or elsewhere, the school district providing remote instruction through the academy shall assign an individual with a class 1, 2, 3, or 4 license under 20-4-106 to facilitate pupil access to the remote instruction.*

(c) ~~emphasize the core subject matters required under the accreditation standards, offer advanced courses for dual credit in collaboration with the Montana university system, and offer enrichment courses~~ *provide courses that empower pupils to become community, college, and career ready, including but not limited to:*

(i) core subject matters required under accreditation standards or school board policy;

(ii) innovative educational programs, as defined in 15-30-3102; and

(iii) proficiency-based courses.

(3) The Montana digital academy ~~must be~~ *is* governed by a board ~~with equal representation from~~ *as follows*:

~~(a) the commissioner of higher education or a designee;~~

~~(b) the superintendent of public instruction or a designee;~~

~~(c) a Montana-licensed and Montana-endorsed classroom teacher appointed by the board of public education;~~

~~(d) a Montana-licensed school district administrator appointed by the board of public education;~~

~~(e) a trustee of a Montana school district appointed by the board of public education;~~

~~(f) the dean of the school of education of the hosting unit of the Montana university system or a designee as a nonvoting member; and~~

~~(g) the two officers provided for in subsection (5) as nonvoting members.~~

(a) The voting members of the governing board include:

(i) a member of the board of regents or a designee;

(ii) a member of the board of public education or a designee;

(iii) the superintendent of public instruction or a designee;

(iv) a trustee of a Montana school district appointed by the governor from a list of three candidates provided by a state professional organization of school district trustees; and

(v) the governor or a designee

(b) The nonvoting members of the governing board include:

(i) a member of the senate appointed by the president of the senate in consultation with the presiding officer of the senate education standing committee and the vice presiding officer of the joint appropriations education standing subcommittee;

(ii) a member of the house of representatives appointed by the speaker of the house of representatives in consultation with the presiding officer of the house of representatives education standing committee and the presiding officer of the joint appropriations education standing subcommittee;

(iii) a Montana-licensed and Montana-endorsed classroom teacher appointed by the voting members of the governing board;

(iv) a Montana-licensed school district administrator appointed by the voting members of the governing board in consultation with a state professional organization of school administrators; and

(v) the program director provided for in subsection (5).

(4) *The governing board shall select one of the legislators appointed pursuant to subsection (3)(b)(i) or (3)(b)(ii) to be the presiding officer of the governing board* ~~The governing board shall elect a presiding officer and~~ *and select a* vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director ~~who shall serve as chief executive officer and vice chief executive officer respectively on the governing board in a nonvoting capacity~~. The program director shall develop and, upon approval of the governing board, implement and publish policies and guidelines for the Montana digital academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;

(f) course evaluation;

(g) grant opportunities; and

(h) other activities that are essential to the success of a statewide distance learning program.

(6) The governing board shall provide a biennial report to the education interim committee and education interim budget committee in accordance with the provisions of 5-11-210. The report must include but is not limited to the following information:

(a) the number of students served and number of enrollments;

(b) a list of school districts served, including data about size and geographic location of the districts served;

(c) the number and type of courses offered, including a breakdown of:

(i) regular courses;

(ii) dual credit, advanced placement, and college courses;

(iii) credit recovery courses; and

(iv) courses offering industry-recognized credentials;

(d) the number of credits earned, including a breakdown of:

(i) regular credits;

(ii) dual credit, advanced placement, and college credits;

(iii) credit recovery credits;

(iv) industry-recognized credentials; and

(v) career and technical education credits;

(e) information about third-party services provided through the clearinghouse and a breakdown of enrollments in Montana digital academy courses compared to enrollments in third-party courses;

(f) results of student satisfaction surveys; and

(g) any recommendations for proposed legislation."

Section 2. Montana digital academy clearinghouse. (1) There is a Montana digital academy clearinghouse. The purpose of the clearinghouse is to provide additional choice and flexibility to build local capacity for serving pupils with remote instruction courses, models, and materials.

(2) The Montana digital academy staff shall develop a clearinghouse interface to provide pupils with access to additional course providers, content, services, and formats. The clearinghouse must provide access to the full range of offerings available through the Montana digital academy.

(3) Services provided through the clearinghouse must include at a minimum but are not limited to:

(a) digital content and platform services;

(b) courses fostering community, college, and career readiness for pupils, including courses to:

(i) satisfy promotion and graduation requirements of the board of public education and the local school district;

(ii) provide access to college credit through direct access to college courses, advanced placement courses, and dual credit courses; and

(iii) provide access to industry-recognized credentials;

(c) third-party services; and

(d) proficiency assessment services.

(4) In administering the clearinghouse, the Montana digital academy staff shall:

(a) select, evaluate, and monitor high-quality providers, courses, and services; and

(b) provide technical assistance on the offered services.

Section 3. Appropriation. There is appropriated $950,000 from the general fund to the office of the commissioner of higher education for each year of the biennium beginning July 1, 2023, to be passed through to the Montana digital academy for the purposes provided in [section 2].

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 20, chapter 7, part 12, and the provisions of Title 20, chapter 7, part 12, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 538

[HB 754]

AN ACT REVISING MOTOR VEHICLE RECORDS LAWS TO DISCLOSE CERTAIN PERSONAL INFORMATION TO A LOCAL GOVERNMENT ELECTIONS OFFICIAL TO VERIFY VOTER REGISTRATION INFORMATION; AMENDING SECTION 61-11-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-11-508, MCA, is amended to read:

"**61-11-508. Permitted disclosure of personal information -- specific uses.** (1) Upon application, proof of the identity of the person requesting a record, and payment of fees required in 61-11-510, the department may disclose personal information, including highly restricted personal information, from a motor vehicle record to:

(a) the person who is the subject of the motor vehicle record; or

(b) a person who represents that the use of the information will be strictly limited to one or more of the following:

(i) a federal, state, or local government agency, including a court or a law enforcement agency, and any individual acting on behalf of the agency in carrying out its functions, including *county government elections officials verifying voter registration information and* representatives of the news media for a legitimate law enforcement purpose, as determined by the department; or

(ii) a person, organization, or entity, upon the express consent of the person to whom the information pertains.

(2) The department ~~shall~~ *may* not disclose a social security number unless:

(a) for the purposes of subtitle VI of Title 49 of the U.S.C.;

(b) to the department of public health and human services for use in administering Title IV-D of the Social Security Act; or

(c) the release of the social security number is specifically authorized by law*, but only the final four numbers of a social security number may be released to county government election officials verifying voter registration information*."

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

Approved May 18, 2023

CHAPTER NO. 539

[HB 761]

AN ACT PROHIBITING AIRBAG FRAUD; PROVIDING DEFINITIONS; AND PROVIDING A PENALTY.

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

Section 1. Airbag fraud prohibition. (1) A person may not knowingly:

(a) import, manufacture, sell, offer for sale, install, or reinstall in a motor vehicle a counterfeit supplemental restraint system component, a

nonfunctional airbag, or an object that does not comply with Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208, as of February 12, 2023, for the make, model, and year of the motor vehicle;

(b) sell, offer for sale, install, or reinstall in a motor vehicle a device that causes a motor vehicle's diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag; or

(c) sell, lease, trade, or transfer a motor vehicle if the person knows that a counterfeit supplemental restraint system component, a nonfunctional airbag, or an object that does not comply with Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208, as of February 12, 2023, for the make, model, and year of the motor vehicle has been installed as part of the motor vehicle's restraint system.

(2) A person who violates this section is subject to the penalties provided in [section 2].

(3) As used in this section:

(a) "Airbag" means a motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system.

(b) "Counterfeit supplemental restraint system component" means a replacement supplemental restraint system component, including but not limited to an airbag, that displays a mark identical to, or substantially similar to, the genuine mark of a motor vehicle manufacturer or a supplier of parts to the manufacturer of a motor vehicle without authorization from that manufacturer or supplier, respectively.

(c) "Nonfunctional airbag" means a replacement airbag that meets any of the following criteria:

(i) the airbag was previously deployed or damaged;

(ii) the airbag has an electric fault that is detected by the vehicle's airbag diagnostic system when the installation procedure is completed and the vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred;

(iii) the airbag includes a part or object, including a supplemental restraint system component, that is installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed; or

(iv) the airbag is subject to the prohibitions of 49 U.S.C. 30120(j), as of February 12, 2023.

(d) "Supplemental restraint system" means a passive inflatable motor vehicle occupant crash protection system designed for use in conjunction with a seat belt assembly as defined in 49 CFR 571.209. A supplemental restraint system includes one or more airbags and all components required to ensure that an airbag works as designed by the vehicle manufacturer including both of the following:

(i) the airbag operates as designed in the event of a crash; and

(ii) the airbag is designed to meet federal motor vehicle safety standards for the specific make, model, and year of the vehicle in which it is or will be installed.

Section 2. Airbag fraud penalty. A person who violates [section 1] is guilty of airbag fraud and upon conviction shall be fined not more than $1,000, imprisoned for not more than 6 months, or both.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 9, part 5, and the provisions of Title 61, chapter 9, part 5, apply to [section 2].

Approved May 18, 2023

CHAPTER NO. 540

[HB 764]

AN ACT REVISING CERTAIN LICENSE PLATE FEES; AMENDING SECTIONS 61-3-321 AND 61-3-722, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. 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 -- definition.** (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 subsections (3)(b) and (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) For a trailer, semitrailer, or pole trailer that is registered under 61-3-701, the annual registration fee based on the declared weight is as follows:

(i) if the declared weight is less than 6,000 pounds, $30; or

(ii) if the declared weight is 6,000 pounds or more, $60.

(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) (a) Except as provided in subsections (5)(b) and (15), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(b) Whenever a valid summer motorized recreation trail pass issued pursuant to 23-2-111 is affixed to an off-highway vehicle other than a quadricycle or motorcycle, the one-time registration fee is $41.25.

(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) (i) Except as provided in subsections (8)(b), (8)(c), and (15), the one-time registration fee for motorcycles and quadricycles registered for use on the public highways is $53.25, the one-time registration fee for motorcycles and quadricycles registered for off-highway use 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.

(ii) 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.

(b) (i) The annual registration fee for motorcycles and quadricycles registered for use on the public highways under 61-3-701 is $44.

(ii) The annual registration fee for motorcycles and quadricycles registered for off-highway use under 61-3-701 is $44.

(iii) The annual registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways under 61-3-701 is $88.

(iv) An additional safety fee of $7 must be collected annually for each motorcycle or quadricycle registered under 61-3-701. The safety fee must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(c) Whenever a valid summer motorized recreation trail pass issued pursuant to 23-2-111 is affixed to a motorcycle or quadricycle, the one-time registration fee for motorcycles and quadricycles registered for:

(i) use on the public highways is $33.25; and

(ii) both off-road use and for use on the public highways is $94.50.

(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), (11)(c), and (15), the one-time registration fee for a snowmobile is $60.50.

(b) Whenever a valid winter trail pass issued pursuant to 23-2-636 is affixed to a snowmobile, the one-time registration fee is $40.50.

(c) (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~~ *of $12* 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 *(13)(a)* 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~~ *of $16* 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 $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. Of the $9 fee:

(i) $6.74 must be deposited in the state special revenue account established in 23-1-105 and used for state parks;

(ii) 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 23-2-108; and

(iv) 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 $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 $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 account established in 61-3-112.

(24) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by a manufacturer for each given type, style, or model of a light vehicle or motor home produced and first made available for retail sale by the manufacturer."

Section 2. Section 61-3-722, MCA, is amended to read:

"**61-3-722. Registration and identification of proportionally registered motor vehicles -- fees -- effect of registration.** (1) The department shall register each proportionally registered motor vehicle, trailer, semitrailer, or pole trailer and issue a license plate or plates, a distinctive registration decal, or other suitable identification device for each motor vehicle, trailer, semitrailer, or pole trailer described in the application upon payment of the appropriate fees and property taxes, as provided by law, for the application and for the license plates, registration decals, or devices issued. A fee ~~of $2~~ *of $2* must be paid for each license plate, each registration decal, and each device issued for each proportionally registered motor vehicle, trailer, semitrailer, or pole trailer. A fee of $5 must be paid for each motor vehicle, trailer, semitrailer, or pole trailer receiving temporary registration as authorized by section 704 of the international registration plan of the American association of motor vehicle administrators, adopted in April 1988. A registration card must be issued for each proportionally registered motor vehicle, trailer, semitrailer, or pole trailer. The registration card must, in addition to other information required by chapter 3, show the number of the license, registration decal, or other device issued for the proportionally registered motor vehicle, trailer, semitrailer, or pole trailer and must be carried in the motor vehicle, trailer, semitrailer, or pole trailer at all times.

(2) Fleet motor vehicles, trailers, semitrailers, or pole trailers registered and identified as fleet motor vehicles are considered fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the motor vehicle, trailer, semitrailer, or pole trailer may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the motor vehicle, trailer, semitrailer, or pole trailer is being operated in conformity with that authority."

Section 3. Coordination instruction. If both House Bill No. 333 and [this act] are passed and approved, and if both have a section amending 61-3-321, then the sections amending 61-3-321 are void and 61-3-321 must be amended as follows:

"**61-3-321. Registration fees of vehicles and vessels -- certain vehicles exempt from registration fees -- disposition of fees -- definition.** (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 subsections (3)(b) and (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) For a trailer, semitrailer, or pole trailer that is registered under 61-3-701, the annual registration fee based on the declared weight is as follows:

(i) if the declared weight is less than 6,000 pounds, $30; or

(ii) if the declared weight is 6,000 pounds or more, $60.

(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) (a) Except as provided in subsections (5)(b) and (15), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(b) Whenever a valid summer motorized recreation trail pass issued pursuant to 23-2-111 is affixed to an off-highway vehicle other than a quadricycle or motorcycle, the one-time registration fee is $41.25.

(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) (i) Except as provided in subsections (8)(b), (8)(c), and (15), the one-time registration fee for motorcycles and quadricycles registered for use on the public highways is $53.25, the one-time registration fee for motorcycles and quadricycles registered for off-highway use 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.

(ii) 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.

(b) (i) The annual registration fee for motorcycles and quadricycles registered for use on the public highways under 61-3-701 is $44.

(ii) The annual registration fee for motorcycles and quadricycles registered for off-highway use under 61-3-701 is $44.

(iii) The annual registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways under 61-3-701 is $88.

(iv) An additional safety fee of $7 must be collected annually for each motorcycle or quadricycle registered under 61-3-701. The safety fee must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(c) Whenever a valid summer motorized recreation trail pass issued pursuant to 23-2-111 is affixed to a motorcycle or quadricycle, the one-time registration fee for motorcycles and quadricycles registered for:

(i) use on the public highways is $33.25; and

(ii) both off-road use and for use on the public highways is $94.50.

(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 *but less than 31 feet*, $152*; and*

(c) 31 feet or longer, $192.

(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~~ *21* feet in length, $125.50; and

(c) for a motorboat, sailboat, or motorized pontoon ~~19~~ *21* feet in length or longer, $295.50.

(11) (a) Except as provided in subsections (11)(b), (11)(c), and (15), the one-time registration fee for a snowmobile is $60.50.

(b) Whenever a valid winter trail pass issued pursuant to 23-2-636 is affixed to a snowmobile, the one-time registration fee is $40.50.

(c) (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~~ *$12* 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 *(13)(a)* 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~~ *$16* 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 $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. Of the $9 fee:

(i) $6.74 must be deposited in the state special revenue account established in 23-1-105 and used for state parks;

(ii) 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 23-2-108; and

(iv) 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 $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 $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 account established in 61-3-112.

(24) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by a manufacturer for each given type, style, or model of a light vehicle or motor home produced and first made available for retail sale by the manufacturer."

Section 4. Effective date. [This act] is effective January 1, 2024.

Approved May 18, 2023

CHAPTER NO. 541

[HB 775]

AN ACT REVISING THE DEPARTMENT LOAN PROCESS WITHIN THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AMENDING SECTIONS 85-1-605, 85-1-613, AND 85-1-617, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-1-605, MCA, is amended to read:

"**85-1-605. Grants, loans, and bonds for state, local, or tribal government assistance.** (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the natural resources projects state special revenue account established in 15-38-302, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government, to a city, county, or other political subdivision or local government body of the state, including an authority as

defined in 75-6-304, or to a tribal government. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) In addition to legislative approval pursuant to subsection (1), the department may request that the board of examiners issue renewable resource bonds of the state so the department may make loans for projects from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5) to a department, agency, board, commission, or other division of state government, to a municipality, county, or other political subdivision or local government body of the state, including an authority as defined in 75-6-304, an irrigation district, a water and sewer district, or other special districts, or to a tribal government.

~~(2)~~*(3)* Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize *and the department may make* loans only to state and local government entities otherwise structured to incur debt.

~~(3)~~*(4)* Loans may not be authorized except to a state, local, or tribal government entity that agrees to secure the authorized loan with its bond.

~~(4)~~*(5)* In addition to implementing those projects approved by the legislature *or requested by the department pursuant to subsection (2)*, the department may request up to 10% of the grant funds available and up to $10 million for loans from the natural resources projects state special revenue account established in 15-38-302 and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, local, or tribal government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding~~,~~ or both~~,~~ that, if delayed ~~until legislative approval can be obtained~~, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative fiscal analyst. The department shall provide a copy of the information to the legislature in accordance with 5-11-210.

~~(5)~~*(6)* The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation~~;~~*,* for assessing feasibility or planning~~;~~*,* for implementing renewable resource projects~~;~~*,* and for similar purposes approved by the legislature *or requested by the department pursuant to subsection (2)*.

~~(6)~~*(7)* Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government."

Section 2. 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 Title 35, chapter 14, or Title 85, chapter 6, part 1, 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 14, 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 3. Section 85-1-617, MCA, is amended to read:

"**85-1-617. Issuing renewable resource bonds -- renewable resource loan proceeds account.** (1) When authorized by the legislature *or requested by the department pursuant to 85-1-605(2)* and within the limits of the authorization *on the request* and ~~within~~ the further limitations established in this section, the board of examiners may issue and sell renewable resource bonds of the state in the amount and manner it considers necessary and proper to finance the renewable resource grant and loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of renewable resource bonds may be issued by the board of examiners, upon request of the department, at public or private sale, in denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at a time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of a banking institution or institutions within or outside

the state that the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of renewable resource bonds, the interest rates and the maturities and mandatory redemption provisions contained in the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the renewable resource loan debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and interest coupons appurtenant to the bonds or notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds and notes issued and sold.

(5) There is created a renewable resource loan proceeds account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the renewable resource loan proceeds account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the renewable resource loan debt service fund and the renewable resource loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the renewable resource loan debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board of examiners, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

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

Approved May 18, 2023

CHAPTER NO. 542

[HB 790]

AN ACT GENERALLY REVISING LAWS RELATED TO THE ELECTRONIC MONITORING OF DEFENDANTS; REQUIRING THAT NOTICE BE PROVIDED TO VICTIMS OF THE AVAILABILITY OF VICTIM NOTIFICATION TECHNOLOGY; REQUIRING NOTIFICATION TO A COUNTY ATTORNEY OR OTHER PROSECUTING ATTORNEY WITHIN 1

BUSINESS DAY OF A DEFENDANT'S VIOLATION OF ANY GEOGRAPHIC RESTRICTIONS; AND AMENDING SECTION 46-9-108, MCA.

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

Section 1. Section 46-9-108, MCA, is amended to read:

"**46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release.** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) *if applicable,* the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, including in a case of partner or family member assault or strangulation of a partner or family member the restrictions contained in a no contact order issued under 45-5-209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) *if applicable,* the defendant shall comply with a specified curfew;

(h) *if applicable,* the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) *if applicable,* the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription. ~~The~~ *If applicable, the* court may require an alcohol monitoring device that can detect the usage of alcohol by an individual and includes but is not limited to:

(i) a transdermal alcohol monitoring unit; or

(ii) a facial recognition breathalyzer unit.

(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;

(k) the defendant shall furnish bail in accordance with 46-9-401; or

(l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) (a) If electronic monitoring is available, there is a rebuttable presumption that the court shall impose electronic monitoring as a condition of release when the offense is:

(i) a second or subsequent partner or family member assault as defined in 45-5-206;

~~(i)~~*(ii)* any felony assault on a partner or family member, as partner or family member is defined in 45-5-206;

~~(ii)~~*(iii)* strangulation of a partner or family member as defined in 45-5-215;

~~(iii)~~*(iv)* felony stalking as defined in 45-5-220; or

~~(iv)~~*(v)* a felony violation of an order of protection as defined in 45-5-626.

(b) If electronic monitoring or alcohol monitoring under subsection (1)(i) is imposed, the court shall specify the terms under which the monitoring must be

performed. The court may require as a condition of release that the defendant pay for the costs of the electronic monitoring or alcohol monitoring. If the defendant has not paid for electronic monitoring or alcohol monitoring as a condition of release, on conviction, the court shall require as a condition of the sentence that the defendant reimburse the providing agency for the costs of electronic monitoring or alcohol monitoring, unless the court determines that the defendant is not or will not be able to pay the costs.

(c) For the purposes of this subsection (2), "electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location, including but not limited to:

(i) radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(ii) active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location, and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party or within the restricted distance of a designated location.

(3) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(4) Whenever a person accused of a violation of 45-5-206, 45-5-215, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release.

(5) If a court orders electronic monitoring of the defendant under subsection (2)(a) and victim notification technology capable of notifying a victim or protected party, either directly or through a monitoring agency, is available, the county attorney or other prosecuting attorney shall provide reasonable notice to the victim or protected party that victim notification technology is available and how the victim or protected party may register to receive notifications directly from the electronic monitoring service provider or monitoring agency if the monitored individual enters within the restricted distance of the victim or protected party or within the restricted distance of a designated location.

(6) If a court orders electronic monitoring of the defendant under subsection (2)(a) and places geographic restrictions on the defendant, the electronic monitoring service provider or monitoring agency shall make a reasonable attempt to provide notice of any violation of the geographic restrictions to the county attorney or other prosecuting attorney within 1 business day of the violation."

Approved May 18, 2023

CHAPTER NO. 543

[HB 791]

AN ACT GENERALLY REVISING DRUG CRIME SENTENCES; PROVIDING A MANDATORY MINIMUM FOR CRIMINAL DISTRIBUTION OF FENTANYL; PROVIDING A MANDATORY MINIMUM FOR CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL; REQUIRING THE DEPARTMENT OF JUSTICE TO REPORT CERTAIN INFORMATION; AMENDING SECTIONS 45-9-101, 45-9-103, AND 46-18-222, 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 45-9-101, MCA, is amended to read:

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

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

(3) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (1), (2), (4), ~~or~~ (5)*, or (6)* shall be imprisoned in the state prison for a term not to exceed 25 years or be fined an amount of not more than $50,000, or both.

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

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

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

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

(6) A person convicted of criminal distribution of dangerous drugs that involves distribution of fentanyl, carfentanil, sufentanil, alfentanil, or a fentanyl derivative, and who possessed or distributed a mixture containing one or more of these substances in a combined amount greater than 100 pills or a combined weight greater than 10 grams in a form such as a powder, solid, or liquid, inclusive of any additives or cutting agents, shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years or may be fined not more than $50,000, or both. The court may not suspend execution or defer imposition of the first 2 years of the sentence, except as provided in 46-18-222(1) through (4), and during the first 2 years of imprisonment, the offender is not eligible for parole.

~~(6)~~*(7)* Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 2. Section 45-9-103, MCA, is amended to read:

"**45-9-103. Criminal possession with intent to distribute.** (1) Except as provided in Title 16, chapter 12, a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101 ~~[in an amount]~~ *in an amount* greater than permitted or for which a penalty is not specified under Title 16, chapter 12.

(2) ~~A~~ *Except as provided in subsection (3), a* person convicted of criminal possession with intent to distribute shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(3) A person convicted of criminal possession with intent to distribute fentanyl shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years or may be fined not more than $50,000, or both. The court may not suspend execution or defer imposition of the first 2 years of the sentence, except as provided in 46-18-222(1) through (4), and during the first 2 years of imprisonment, the offender is not eligible for parole.

~~(3)~~*(4)* Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 3. Section 46-18-222, MCA, is amended to read:

"**46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by *45-9-101(6), 45-9-103(3),* 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~and~~ 45-5-625(4)*, 45-9-101(6), and 45-9-103(3)* do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-508, 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b) and the judge determines, based on the findings contained in a psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which

case the judge shall include in its judgment a statement of the reasons for its determination."

Section 4. Fentanyl mandatory minimum report. Pursuant to the attorney general's duty provided in 2-15-501(5) to exercise supervisory control over the county attorneys and to require of them reports as to the public business entrusted to their charge, beginning on September 1, 2024, the attorney general shall report annually by September 1 to the law and justice interim committee and the judicial branch, law enforcement, and justice budget committee, in accordance with 5-11-210, on the number of times a court imposed a mandatory minimum required by 45-9-101(6) or 45-9-103(3) in the previous fiscal year.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, part 5, and the provisions of Title 2, chapter 15, part 5, apply to [section 4].

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

Section 7. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved May 18, 2023

CHAPTER NO. 544

[HB 802]

AN ACT REVISING LAWS RELATED TO REVOKING PEACE OFFICER CERTIFICATION; PROVIDING THAT A PEACE OFFICER'S CERTIFICATION MAY NOT BE REVOKED SOLELY ON THE BASIS OF A MENTAL ILLNESS; AND AMENDING SECTION 44-4-403, MCA.

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

Section 1. Section 44-4-403, MCA, is amended to read:

"**44-4-403. Council duties -- determinations -- appeals.** (1) The council shall:

(a) establish basic and advanced qualification and training standards for employment;

(b) conduct and approve training; and

(c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.

(2) The council may waive or modify a qualification or training standard for good cause.

(3) The council may not revoke a public safety officer's certification solely on the basis of a public safety officer's mental illness unless, due to the mental illness, a physical or mental condition exists that, even with reasonable accommodation:

(a) substantially limits the officer's ability to perform the essential duties of a public safety officer; or

(b) poses a direct threat to the health and safety of the public or fellow public safety officers.

~~(3)~~*(4)* A person who has been denied certification or recertification or whose certification or recertification has been suspended or revoked is entitled to a contested case hearing before the council pursuant to Title 2, chapter 4, part 6. A decision of the council is a final agency decision subject to judicial review.

~~(4)~~*(5)* The council is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining and retaining confidential criminal justice information, as defined in 44-5-103, regarding public safety

officers in order to provide for the certification or recertification of a public safety officer and for the suspension or revocation of certification of a public safety officer. The council may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979 provided for in Title 44, chapter 5."

Approved May 18, 2023

CHAPTER NO. 545

[HB 833]

AN ACT GENERALLY REVISING LAWS RELATED TO TEACHER RECRUITMENT AND RETENTION; PROVIDING LEGISLATIVE FINDINGS AND INTENT; ESTABLISHING THE TEACHER RESIDENCY PROGRAM ADMINISTERED BY THE OFFICE OF PUBLIC INSTRUCTION; PROVIDING PROGRAM PARAMETERS; PROVIDING DEFINITIONS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, evidence indicates a year-long undergraduate teacher residency can improve teacher recruitment, retention, workforce shortages, and diversity of the teaching profession; and

WHEREAS, teacher residencies provide a consistent pipeline of better-prepared new teachers, reduce turnover, fill chronic shortage areas, and prepare teachers who are more likely to teach in high-need schools; and

WHEREAS, year-long undergraduate teacher residencies are seen as the "gold-standard" for teacher preparation because of the in-depth, immersive experience they provide candidates; and

WHEREAS, the Office of Public Instruction has utilized temporary federal recovery dollars to address teacher recruitment and retention issues and to collaboratively create the promising Montana Teacher Residency Demonstration Project, which will require legislative authorization and support to continue.

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

Section 1. Legislative findings -- intent. (1) The legislature finds and affirms that, pursuant to 20-9-309, the definition of "a basic system of free quality public elementary and secondary schools" requires the recruitment and retention of qualified and effective teachers.

(2) The legislature finds and declares that the provision of and participation in a teacher residency program is constitutionally compliant and protected. The legislature declares that any public or private regulation that discriminates against a school district or an undergraduate student participating in a teacher residency program is inconsistent with constitutional goals and guarantees under Article X of the Montana constitution.

(3) The legislature intends that the teacher residency program be implemented in a collaborative and efficient manner among the various partnering entities and in a manner that results in teachers who participate in the program being:

(a) better prepared to teach effectively in the years following the program; and

(b) more inclined to remain in the teaching profession longer, especially in rural schools and high-need content areas.

Section 2. Teacher residency program. (1) The superintendent of public instruction shall administer a teacher residency program in collaboration with school districts and professional educator preparation programs.

(2) The teacher residency program must involve:

(a) a shared vision and partnership between:

(i) a resident;

(ii) a teacher-leader;

(iii) a school district; and

(iv) an educator preparation program;

(b) ensuring that a resident possesses the cultural competencies to succeed and be an effective educator in the school hosting the resident;

(c) selection and training for teacher-leaders;

(d) a resident being matched with a school district that provides a high-quality and supportive experience for residents working with a teacher-leader;

(e) flexible course delivery to allow a resident to complete required credits in the resident's preparation program;

(f) a cohort model with opportunities for virtual and in-person training and support;

(g) financial and other compensation for residents and teacher-leaders including:

(i) housing for the resident or a housing allowance provided to the resident by the host school district;

(ii) for a resident in a professional educator preparation program accredited by the board of public education, a last-dollar tuition grant to eliminate tuition costs for the resident for the year of the residency;

(iii) a stipend for the teacher-leader; and

(iv) compensation for the resident, a portion of which may be conditioned on completion of the program and the signing of a teaching contract in a Montana public school for the following year; and

(h) a methodology for evaluating the effectiveness of the program.

(3) The superintendent of public instruction may contract with a professional educator preparation program located in a unit of the Montana university system to coordinate the teacher residency program or aspects of the program.

(4) If a resident does not complete the program or does not teach in a Montana public school for 3 or more years within 5 years of completing the teacher residency program, the superintendent of public instruction shall inform the commissioner of higher education and the commissioner shall convert the amount of any tuition grant provided to the resident under the program to a loan.

(5) For the purposes of [sections 1 and 2] the following definitions apply:

(a) "Professional educator preparation program" means a postsecondary program intended to lead to teacher licensure that is accredited by the board of public education or recognized by the board as an essentially equivalent program for teacher certification purposes.

(b) "Resident" means a student enrolled in a professional educator preparation program who is selected for participation in a teacher residency program as described in this section and who commits to teaching in a Montana public school following completion of the teacher residency program.

(c) "Teacher-leader" means an experienced classroom teacher who is selected to work with, coach, and mentor a resident.

(d) "Teacher residency program" or "program" means a partnership between a district and a professional educator preparation program to provide residents with a year-long, practice-based learning experience working directly with students in a manner that mirrors the experience of teachers in that school and meets the criteria of supervised teaching experience as defined by the board of public education.

Section 3. Appropriation. (1) There is appropriated $2 million from the general fund to the office of public instruction for the fiscal year beginning July 1, 2024, for administering the teacher residency program under [sections 1 and 2].

(2) The legislature intends that the appropriation in this section be considered part of the ongoing base for the next legislative session.

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 4, and the provisions of Title 20, chapter 4, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 546

[HB 836]

AN ACT PROVIDING FOR THE COMMISSIONER OF INSURANCE TO ISSUE A REGULATORY SANDBOX WAIVER; ALLOWING THE COMMISSIONER TO GRANT A VARIANCE OR WAIVER WITH RESPECT TO REQUIREMENTS OF THE INSURANCE CODE; PROVIDING FOR APPLICATIONS TO THE COMMISSIONER; PROVIDING FOR CONSIDERATIONS IN GRANTING THE WAIVER; PROVIDING LIMITS ON THE GRANT OF A WAIVER; PROVIDING FOR CONSUMER DISCLOSURES; PROVIDING FOR TIME LIMITATIONS ON THE GRANT OF A WAIVER; PROVIDING FOR FEES AND PENALTIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 33-1-102, MCA; AND PROVIDING A TERMINATION DATE.

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

Section 1. Regulatory sandbox waiver -- application -- considerations by the commissioner -- limitations -- rulemaking. (1) The commissioner may grant a variance or waiver with respect to the requirements of an insurance law or rule if a property or casualty insurer, subject to that law or rule, demonstrates to the satisfaction of the commissioner that:

(a) the application of the law or rule would prohibit the introduction of an innovative or more efficient insurance product or service that the applicant intends to offer during the period the variance or waiver is granted;

(b) the public policy goals of the law or rule may be achieved by other means;

(c) the waiver may not substantially increase any risk to consumers;

(d) the waiver may not cause a material negative impact to the insurer in matters including but not limited to solvency; and

(e) the waiver is in the public interest.

(2) An application for a waiver must include the following information:

(a) the identity of the insurer applying for the waiver;

(b) the identity of the directors and executive officers of the insurer, any persons who are beneficial owners of 10% or more of the voting securities of the insurer, and any individuals with power to direct the management and policies of the insurer;

(c) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it must be offered;

(d) a description of the potential benefits to consumers of the product or service;

(e) a description of the potential risks, including but not limited to financial risks, to consumers posed by the product or service or approval of the proposed waiver and how the applicant proposes to mitigate the risks;

(f) a statement that the insurer has a physical presence in the state and has a certificate of authority issued by the commissioner to write insurance in the state;

(g) a filing fee of $1,000 unless the submission is complex and lengthy, in which case the commissioner may provide an estimate of the fee that is commensurate with regulatory costs for consideration of the submission. The insurer may withdraw the submission after receiving the estimate.

(h) if applicable, a request to segregate and protect from disclosure any confidential trade secrets in the application must be stated in the application with the confidential information specifically identified for the commissioner; and

(i) any additional information required by the commissioner.

(3) (a) If approved by the commissioner, an innovation waiver must be granted for an initial period of up to 3 years.

(b) Prior to the end of the waiver period, the commissioner may grant an extension for up to an additional 3 years. An extension request must be made to the commissioner at least 45 days prior to the end of the initial waiver period and must include the length of the extension period requested and specific reasons why the extension is necessary. The commissioner shall grant or deny an extension request before the end of the initial waiver period.

(4) A waiver must include any terms, conditions, or limitations considered appropriate by the commissioner, including limits on the amount of premium that may be written in relation to the underlying product or service and the number of consumers that may purchase or utilize the underlying product or service, provided that a product or service subject to an innovation waiver may not be purchased or utilized by more than 10,000 insureds. It is not an unlawful discriminatory practice by an insurer to refuse to provide a product or service subject to an innovation waiver when there is a legitimate basis to refuse to provide a product or service that is tied to the limitations or purpose supporting the waiver.

(5) A product or service offered pursuant to an innovation waiver must include the following written disclosures to consumers in clear and conspicuous form:

(a) the name and contact information for the representative of the insurer providing the product or service;

(b) that the product or service is authorized pursuant to an innovation waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which must be specified;

(c) contact information for the commissioner, including how a consumer may file a complaint with the commissioner regarding the product or service; and

(d) any additional disclosures required by the commissioner.

(6) (a) The commissioner shall either grant or deny a waiver within 90 days of receipt of a completed request.

(b) The commissioner's decision to grant, deny, or revoke a waiver is not subject to the hearings and appeals provisions as provided in Title 33, chapter 1, part 7.

(7) The commissioner may not grant a waiver with respect to any of the following:

(a) any law, rule, or other provision that is not subject to the commissioner's jurisdiction;

(b) any law, rule, or other provision concerning the assets, deposits, investments, capital surplus, or other solvency requirements applicable to insurers;

(c) the required participation in any assigned risk plan, residual market, or guaranty fund;

(d) the provisions of Title 33 related to insurers other than property or casualty insurers;

(e) any law or rule required to maintain accreditation by the national association of insurance commissioners unless the law or rule permits variances or waivers and the effect of the waiver does not eliminate accreditation;

(f) the application of any taxes or fees; and

(g) any other law or rule considered ineligible by the commissioner.

(8) A person who receives a waiver under this section may be required to possess or obtain one or a combination of the following in an amount subject to the conditions and for the purposes as the commissioner determines necessary for the protection of consumers:

(a) a contractual liability insurance policy;

(b) a surety bond issued by an authorized surety;

(c) securities of the type eligible for deposit by authorized insurers in this state;

(d) evidence that the insurer has established an account payable to the commissioner in a federally insured financial institution in this state and has deposited money of the United States in an amount equal to the amount required by this subsection (8) that is not available for withdrawal except by direct order of the commissioner;

(e) a letter of credit issued by a qualified United States financial institution; or

(f) another form of security authorized by the commissioner.

(9) (a) If a waiver is granted pursuant to this section, the commissioner shall provide public notice of the existence of the waiver by providing the following information:

(i) the specific statute or rule to which the waiver applies;

(ii) the name of the insurer who applied for and received the waiver;

(iii) the duration and other terms, conditions, or limitations of the waiver; and

(iv) any additional information considered appropriate by the commissioner.

(b) The notice requirement of this subsection (9) may be satisfied by publication on the commissioner's website.

(10) (a) The commissioner may revoke a waiver if the insurer who obtains the waiver fails to comply with any terms, conditions, or limitations established by the commissioner or the requirements of this section or if the waiver is causing a consumer harm or causes material harm to the insurer's solvency.

(b) In addition to any other sanctions and penalties permitted by the law, the commissioner may impose a fine of not more than $1,000 on any insurer who obtains a waiver and fails to comply with the material terms, conditions, or limitations established by the commissioner or the requirements of this section.

(11) The commissioner, by rule, may adopt procedures for submissions and granting, denying, monitoring, and revoking petitions for a waiver pursuant to this section. The procedures must set forth requirements for the ongoing monitoring, examination, and supervision of and reporting by each insurer granted a waiver under this section and must permit the commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures must provide for an expedited application process

for a product or service that is substantially similar to one for which a waiver has previously been granted by the commissioner.

(12) On expiration of an innovation waiver, the insurer who obtained the waiver shall cease all activities that were permitted only as a result of the waiver and comply with all applicable laws and rules.

(13) The ability to grant a waiver under this section may not be interpreted to limit or otherwise affect the authority of the commissioner to exercise discretion to waive or enforce requirements as permitted under any other section of this title or any rules.

(14) A waiver may not be granted that extends beyond July 30, 2029.

Section 2. Section 33-1-102, MCA, is amended to read:

"**33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, part 21, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25, part 14.

(13) Except as provided in 33-2-2212, this code does not apply to private air ambulance services that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households.

(14) This code does not apply to guaranteed asset protection waivers that are governed by Title 30, chapter 14, part 22.

(15) This code does not apply to direct patient care agreements established pursuant to 50-4-107.

(16) This code does not apply to a health care sharing ministry that meets the requirements of 50-4-111.

(17) This code does not apply to a regulatory sandbox waiver, except as otherwise specified by the commissioner or as provided in [section 1]."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [section 1].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Termination. [This act] terminates July 30, 2029.

Approved May 18, 2023

CHAPTER NO. 547

[HB 840]

AN ACT REVISING THE TOBACCO TAX ALLOCATION FOR THE OPERATION AND MAINTENANCE OF STATE VETERANS' NURSING HOMES; PROVIDING AN APPROPRIATION; AMENDING SECTION

16-11-119, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 16-11-119, MCA, is amended to read:

"**16-11-119. Disposition of taxes -- statutory appropriation.** (1) A sum equal to the amount necessary to purchase cigarette tax stamps must be deposited to or allocated from the state special revenue fund to the credit of the department from cigarette taxes collected under the provisions of 16-11-111, as provided in subsection (5) of this section.

(2) After the deposit or allocation in subsection (1), cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or ~~$4~~ *$5* million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) 2.6% in the major repair long-range building program account provided for in 17-7-221;

(c) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(d) the remainder to the state general fund.

(3) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(4) The taxes collected on tobacco products other than cigarettes must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201.

(5) Each fiscal year, a sum equal to the amount of money necessary to purchase cigarette tax stamps is statutorily appropriated, as provided in 17-7-502, from the state special revenue fund allocation in subsection (1) to the department for tax administration responsibilities."

Section 2. Appropriation. There is appropriated $100 from the general fund to the department of revenue for the fiscal year beginning July 1, 2023, for the purpose of complying with administrative and computer programming expenses associated with the implementation of [this act].

Section 3. Effective date. [This act] is effective July 1, 2023.

Section 4. Applicability. [This act] applies to fiscal years beginning after June 30, 2023.

Approved May 18, 2023

CHAPTER NO. 548

[HB 845]

AN ACT REVISING LAWS RELATED TO THE DISTRIBUTION OF THE MONTANA CODE ANNOTATED IN ELECTRONIC FORMAT; PROVIDING THAT A STATE GOVERNMENT AGENCY IS ENTITLED TO ELECTRONIC COPIES OF THE MONTANA CODE ANNOTATED AT A REDUCED COST; AMENDING SECTION 5-11-209, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 5-11-209, MCA, is amended to read:

"**5-11-209. Codes -- availability to legislators -- reserved for use by legislative committees -- *state government employees.*** (1) When it becomes available after each regular legislative session, each legislator is entitled to purchase for $10 each one set of the printed and bound Montana Code Annotated statute text and histories. ~~and~~ *A legislator is entitled to receive* one *electronic version of the* Montana Code Annotated that is produced for sale to the public on computer-readable media~~, such as CD-ROM~~ *at no charge*.

(2) The legislative services division shall reserve 50 sets of the printed versions of Montana Code Annotated statute text and histories for the use of the standing and select committees of the legislature.

(3) A state agency is entitled to order and receive electronic versions of the Montana Code Annotated on computer-readable media for use by state government employees for state work purposes at a cost that is commensurate with the royalty fee charged by a third-party vendor and any associated costs incurred by the legislative services division for administering deployment of the computer-readable media.

~~(3)~~*(4)* Costs associated with providing ~~code~~ *printed and bound* sets *and electronic versions of the Montana Code Annotated* as required by this section must be paid out of the state special revenue fund account established under 1-11-301.

(5) For the purposes of this section, "state agency" means a department, board, commission, office, bureau, or other public authority of state government."

Section 2. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 549

[HB 874]

AN ACT GENERALLY REVISING LAWS RELATED TO SUBDIVISION AND PLANNING; REVISING THE FEE AMOUNTS THAT A LOCAL GOVERNMENT MAY ASSESS FOR THE EXAMINATION OF EXEMPT DIVISIONS OF LAND; AND AMENDING SECTIONS 76-3-201 AND 76-3-207, MCA.

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

Section 1. Section 76-3-201, MCA, is amended to read:

"**76-3-201. Exemption for certain divisions of land -- fees for examination of division.** (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (4), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) An exempt division of land as provided in subsection (1)(a) is not considered a subdivision under this chapter if not more than four new lots or parcels are created from the original lot or parcel.

(3) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(4) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. Except as provided in subsection (5), a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (4)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter, if applicable.

(5) If a parcel of land was divided pursuant to subsection (1)(b) and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of this chapter.

(6) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed ~~$200~~ *$400*, for the examination."

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 landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the provisions of 76-3-211;

(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), 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.

(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~~ *$400*, for the examination."

Approved May 18, 2023

CHAPTER NO. 550

[HB 880]

AN ACT MAKING THE HUCKLEBERRY THE OFFICIAL STATE FRUIT OF MONTANA; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. State fruit. The huckleberry, Vaccinium membranaceum, is the official state fruit.

Section 2. Appropriation. There is appropriated $500 from the state general fund to the department of transportation for the biennium beginning July 1, 2023, to design an image of a huckleberry for inclusion with other state symbols on the Montana highway tourist map.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 551

[HB 886]

AN ACT REVISING THE YOUTH COURT ACT TO ALLOW ADDITIONAL ACCESS TO SEALED RECORDS; REQUIRING VICTIM CONSENT TO DESTROY CERTAIN RECORDS; ALLOWING THE VICTIM OF CERTAIN CRIMES TO ACCESS SEALED RECORDS ON ORDERS OF THE COURT FOR GOOD CAUSE SHOWN; AND AMENDING SECTION 41-5-216, MCA.

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

Section 1. Section 41-5-216, MCA, is amended to read:

"**41-5-216. Disposition of youth court, law enforcement, and department records -- sharing and access to records.** (1) Formal and informal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing. *However, records relating to the adjudication of a youth for a sexual offense as defined in 46-23-502 may not be destroyed without the consent of the victim. Consent may not be obtained from the victim until after the victim has attained 18 years of age.*

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal and informal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, ~~upon~~ *on* order of the youth court, for good cause to:

(a) those persons and agencies listed in 41-5-215(2); ~~and~~

(b) adult probation and parole staff preparing a presentence report on an adult with an existing sealed youth court record*; and*

(c) for records relating to the adjudication of a youth for a sexual offense as defined in 46-23-502, the victim of the offense.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the office of court administrator and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation.

(b) The department of public health and human services, the office of court administrator, and the department shall disassociate the offense and disposition information from the name of the youth in the respective

management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the office of court administrator or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records are confidential and may be shared only with those persons and agencies listed in 41-5-215(2).

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the sharing of formal or informal youth court records within the juvenile probation management information system to a person or agency listed in 41-5-215(2).

(9) This section does not prohibit the sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). A person or agency receiving the youth court record shall destroy the record after it has fulfilled its purpose.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003 and studies conducted between individuals and agencies listed in 41-5-215(2).

(12) This section does not prohibit the office of court administrator, upon written request from the department of revenue, from confirming whether a person applying for a registry identification card pursuant to 16-12-503 or a license pursuant to 16-12-203 is currently under youth court supervision.

(13) The fee for a person to inspect youth court records under subsection (5)(c) is $5."

Approved May 18, 2023

CHAPTER NO. 552

[HB 902]

AN ACT GENERALLY REVISING DRIVING LAWS; REVISING AUTHORITY TO SUSPEND OR REVOKE A RESTRICTED LICENSE; REVISING AREAS IN WHICH CARELESS DRIVING MAY BE COMMITTED; REVISING THE PENALTY FOR RECKLESS DRIVING; PROVIDING AN APPROPRIATION;

AMENDING SECTIONS 61-5-113, 61-8-302, AND 61-8-715, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 61-5-113, MCA, is amended to read:

"**61-5-113. Restricted licenses.** (1) If, upon an applicant's completion of the vision, knowledge, and skills tests required under 61-5-110, 61-5-111, and 61-5-207, the department determines that an applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway depends on the use of adaptive equipment or operational restrictions, then the department shall include the appropriate restrictions on a license issued to the applicant. Once imposed, the restrictions may not be removed unless the department determines that the adaptive equipment or operational restrictions are no longer essential to the licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway.

(2) The department may either issue a special restricted license or may include the restrictions on the usual license form.

(3) ~~The department~~ *A court of competent jurisdiction* may upon receiving satisfactory evidence of a violation of the restrictions of a license or endorsement suspend or revoke the license. The licensee is entitled to a hearing as upon suspension or revocation under this chapter.

(4) It is a misdemeanor for a person to operate a motor vehicle in a manner in violation of the restrictions imposed in a restricted license."

Section 2. Section 61-8-302, MCA, is amended to read:

"**61-8-302. Careless driving.** (1) A person operating or driving a vehicle ~~on a public highway~~ *upon ways of this state open to the public* shall drive it in a careful and prudent manner that does not unduly or unreasonably endanger the life, limb, property, or other rights of a person ~~entitled to the use of the highway~~ *using the ways of this state open to the public*.

(2) A person who is convicted of the offense of careless driving is subject to the penalties provided in 61-8-711 or 61-8-716."

Section 3. Section 61-8-715, MCA, is amended to read:

"**61-8-715. Reckless driving -- reckless endangerment of highway workers -- reckless endangerment of emergency personnel -- penalty.** (1) Except as provided in subsection (2), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b), convicted of reckless endangerment of a highway worker under 61-8-301(4), or convicted of reckless endangerment of emergency personnel under 61-8-346 shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, a fine of not less than $100 or more than $500, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than ~~10~~ *5* days or more than 6 months, a fine of not less than $500 or more than $1,000, or both.

(2) A person who is convicted of reckless driving under 61-8-301 or convicted of reckless endangerment of emergency personnel under 61-8-346 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding $10,000, incarceration for a term not to exceed 1 year, or both."

Section 4. Appropriation. There is appropriated $1,000 from the general fund to the department of justice for the biennium beginning July 1, 2023, to implement [section 2].

Section 5. Effective dates. (1) [Sections 1 through 3] are effective October 1, 2023.

(2) [Section 4] and this section are effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 553

[HB 918]

AN ACT ELIMINATING THE REQUIREMENT THAT A DAY-CARE HOME BE REGISTERED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO QUALIFY AS A RESIDENTIAL USE OF PROPERTY FOR PURPOSES OF ZONING; PROVIDING AN APPROPRIATION; AMENDING SECTION 76-2-412, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 76-2-412, MCA, is amended to read:

"**76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning.** (1) A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home ~~registered by the department of public health and human services under Title 52, chapter 2, part 7~~, *as defined in 52-2-703* is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving ~~12~~ *15* or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home ~~registered by the department of public health and human services~~."

Section 2. Appropriation. There is appropriated $500 from the general fund to the department of public health and human services for the biennium beginning July 1, 2023, to pay for costs associated with notifying local governments about the change in law regarding a family day-care home or a group day-care home zoning in [section 1].

Section 3. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 554

[HB 922]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP AND IMPLEMENT A PLAN COMPLYING WITH THE PRINCIPLES OF THE OLMSTEAD DECISION; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Olmstead plan -- stakeholder involvement -- elements. (1) The department shall develop and implement a plan to ensure that state-funded services and supports for Montanans with disabilities are, to the greatest extent possible, provided in the community rather than in an institutional setting in accordance with the requirements of the United States supreme court decision in Olmstead v. L.C., 527 U.S. 581 (1999).

(2) The department shall consult with the statewide independent living council established pursuant to 29 U.S.C. 796d and, as appropriate, other stakeholders prior to determining the process for developing a comprehensive plan for reviewing and making recommendations on department-funded, community-based services for individuals with physical, mental, and developmental disabilities.

(3) The department may contract with a third party for development of the plan.

(4) The plan must include:

(a) an overview of the Olmstead decision;

(b) an analysis of the department's current efforts to integrate people with disabilities into the community and the department-funded services and supports available to people with disabilities, including:

(i) the populations currently served, by disability and geographic location;

(ii) the settings in which services are provided; and

(iii) expenditures made for the services and supports;

(c) an assessment of the strengths and weaknesses of the system, including but not limited to:

(i) an analysis of the number and location of people waiting for services;

(ii) workforce needs; and

(iii) suggestions from individuals receiving department-funded services and supports;

(d) recommendations for increasing the availability of and access to community-based services and supports, including:

(i) the steps needed to correct unjustified institutionalization of individuals with disabilities and prevent future unnecessary institutionalization of the individuals; and

(ii) measurable goals for increased availability and access; and

(e) the incorporation of quality assurance activities to ensure compliance with the principles of the Olmstead decision.

(5) The plan must take into consideration that community supports must be provided when required pursuant to Olmstead v. L.C.

(6) The department and any third-party contractor shall provide regular opportunities for stakeholder input into the development of the plan and for stakeholder comment on subsequent implementation of the plan.

(7) No later than June 30, 2029, and every 6 years after that, the department shall review the plan to ensure it remains consistent with the principles of the Olmstead decision.

Section 2. Appropriation. There is appropriated $300,000 from the HCBS 10% MOE state special revenue account to the department of public health and human services for the biennium beginning July 1, 2023, to develop the plan required under [section 1].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 2, part 2, and the provisions of Title 53, chapter 2, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 555

[HB 928]

AN ACT CLARIFYING THAT THE BOARD OF OIL AND GAS CONSERVATION REGULATES CERTAIN WATERS PRODUCED FROM OIL AND GAS OPERATIONS; AUTHORIZING THE BOARD TO ESTABLISH A HEARINGS FEE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 82-11-111 AND 85-2-510, MCA.

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

Section 1. Section 82-11-111, MCA, is amended to read:

"**82-11-111. (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*; and*

(d) adopt and enforce rules and orders to implement the provisions of 85-2-510, including the establishment of a fee for petitioners seeking a hearing.

(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 technological university 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*; and*

(d) adopt and enforce rules and orders to implement the provisions of 85-2-510, including the establishment of a fee for petitioners seeking a hearing.

(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 technological university 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 2. Section 85-2-510, MCA, is amended to read:

"**85-2-510. Production of water from oil and gas wells -- hearings -- jurisdiction of board of oil and gas conservation.** ~~Within any designated or modified controlled ground water area or subarea wherein oil and/or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil and/or gas withdrawals, such production of water~~ *The regulation of the production, use, or disposal of fresh, brackish, or saline water that is entirely the result of the production of oil or gas, or both,* ~~shall~~ *must* be under the ~~prior~~ jurisdiction of the board of oil and gas conservation *and is subject to the requirements of 82-11-123*. Hearings pertaining to the production, use, or disposal of water from those wells ~~shall~~ *must* be held by that board in accordance with the procedures established by that board. The department may petition the board of oil and gas conservation for hearings in regard to those operations, and it ~~shall~~ *must* be notified by the board of oil and gas conservation of those hearings instigated by other parties ~~when those hearings involve operations within a controlled ground water area or subarea~~."

Approved May 18, 2023

CHAPTER NO. 556

[HB 938]

AN ACT GENERALLY REVISING ENCROACHMENT PERMIT LAW; ALLOWING BOARDS OF COUNTY COMMISSIONERS TO ISSUE ENCROACHMENT PERMITS UNDER CERTAIN CONDITIONS; PROVIDING

AN APPROPRIATION; AMENDING SECTIONS 7-14-2103, 7-14-2134, AND 7-14-2135, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 7-14-2103, MCA, is amended to read:

"**7-14-2103. Duties of county commissioners concerning county roads.** (1) A board of county commissioners has general supervision over the county roads within the county.

(2) A board may survey, view, lay out, record, open, work, and maintain county roads that are established in accordance with this chapter. Guideposts must be erected.

(3) A board may discontinue or abandon county roads when freeholders properly petition for discontinuance or abandonment.

(4) A board of county commissioners may determine the level and scope of maintenance on a county road under its jurisdiction, and a local entity or the state may not withhold funds based on the board's maintenance determinations.

(5) A board of county commissioners may issue encroachment permits on request pursuant to 7-14-2134(5)."

Section 2. Section 7-14-2134, MCA, is amended to read:

"**7-14-2134. Removal of highway encroachment.** (1) Except as clarified in 23-2-312 and 23-2-313 and except as provided in subsection (4) of this section, if any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor shall immediately remove the encroachment.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

(4) This section does not apply to a fence for livestock control or property management that is in a county road right-of-way and that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fence and bridge appurtenances are not on the roadway, as defined in 61-1-101. Any fence described in this subsection must comply with 23-2-313.

(5) An encroachment may be permitted by the board of county commissioners. A permit issued under this subsection (5) must be issued by the board of county commissioners after evaluating the written request in a public meeting. Encroachment permits issued by the board of county commissioners may be revoked by giving, at a minimum, 30 days' notice to the permittee in the event the encroachment interferes with the public use or maintenance of the road. In the event of an emergency, an encroachment may be removed with no notice to the permittee."

Section 3. Section 7-14-2135, MCA, is amended to read:

"**7-14-2135. Notice to remove encroachment.** (1) ~~Notice~~ *Except as provided in 7-14-2134(5), notice* to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or the person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) by leaving it at the occupant's or owner's place of residence if the person resides in the county; or

(b) by posting it on the encroachment if the person does not reside in the county."

Section 4. Appropriation. There is appropriated $1,000 from the general fund to the department of transportation for the biennium beginning July 1, 2023, to implement [sections 1 through 3].

Approved May 18, 2023

CHAPTER NO. 557

[HB 947]

AN ACT REVISING ELECTION LAWS; CHANGING THE STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT UNDER SECTIONS 13-37-128 AND 13-37-129, MCA; CHANGING THE RETENTION SCHEDULE FOR CAMPAIGN ACCOUNT RECORDS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 13-37-130 AND 13-37-208, MCA; REPEALING SECTION 13-37-250, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 13-37-130, MCA, is amended to read:

"**13-37-130. Limitation of action.** An action may not be brought under 13-37-128 and 13-37-129 more than ~~4 years~~ *2 years* after the occurrence of the facts that give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 is the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36."

Section 2. Section 13-37-208, MCA, is amended to read:

"**13-37-208. Treasurer to keep records.** (1) (a) Except as provided in subsection (1)(b), the campaign treasurer of each candidate, each political committee, and each joint fundraising committee shall keep detailed accounts of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or joint fundraising committee that are required to be set forth in a report filed under this chapter. The accounts must be current within not more than 10 days after the date of receiving a contribution or making an expenditure.

(b) The accounts described in subsection (1)(a) must be current as of the 5th day before the date of filing of a report as specified in 13-37-228.

(2) Accounts of a deputy campaign treasurer must be transferred to the treasurer of a candidate or political committee before the candidate, political committee, or joint fundraising committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate, political committee, or joint fundraising committee must be preserved by the campaign treasurer for a period of ~~4 years~~ *2 years from the date of the election*."

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

13-37-250. Voluntary spending limits.

Section 4. Appropriation. There is appropriated $500 from the general fund to the commissioner of political practices for the fiscal year beginning July 1, 2023, to fund updates to the commissioner of political practices' website to reflect the changes in [sections 1 and 2].

Section 5. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 558

[HB 408]

AN ACT REVISING THE STUDENT SCHOLARSHIP ORGANIZATION AND INNOVATIVE EDUCATIONAL PROGRAM INCOME TAX CREDITS; INCREASING THE AGGREGATE LIMITS FOR THE CREDITS; LIMITING THE AMOUNT OF DONATIONS THAT A SCHOOL DISTRICT MAY RETAIN; PROVIDING FOR REDISTRIBUTION OF FUNDS THAT EXCEED A SCHOOL DISTRICT'S LIMIT TO SCHOOL DISTRICTS THAT RECEIVE ADVANCED OPPORTUNITY AID; REVISING THE DEFINITION OF INNOVATIVE EDUCATIONAL PROGRAM; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-30-3102, 15-30-3110, 15-30-3111, AND 17-7-502, MCA; AMENDING SECTIONS 23 AND 24, CHAPTER 480, LAWS OF 2021; REPEALING SECTIONS 8, 9, 10, 14, 15, 16, AND 25, CHAPTER 480, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

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

Section 1. Innovative educational program account -- revenue allocated -- appropriations from account. (1) There is an innovative educational program account in the state special revenue fund established in 17-2-102. The funds in the account must be administered by the superintendent of public instruction.

(2) The superintendent of public instruction shall deposit in the account innovative educational program donations transferred from school districts because the donations exceed the limits provided for in 15-30-3110(7).

(3) Interest and earnings on the account must be deposited in the account.

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction for distribution pursuant to 15-30-3110(7)(c) to school districts that receive advanced opportunity aid under 20-7-1506(4). The funds must be distributed in addition to the advanced opportunity aid distributions under 20-7-1506(4) and at the same time and in the same proportion as the advanced opportunity aid distributions.

Section 2. Section 15-30-3102, MCA, is amended to read:

"**15-30-3102. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Donation" means a gift of cash.

(3) "Eligible student" means a student who is a Montana resident and who is 5 years of age or older on or before September 10 of the year of attendance and has not yet reached 19 years of age.

(4) "Innovative educational program" includes any of the following:

(a) transformational learning as defined in 20-7-1602;

(b) advanced opportunity as defined in 20-7-1503;

(c) any program, service, instructional methodology, or adaptive equipment used to expand opportunity for a child with a disability as defined in 20-7-401;

(d) any courses provided through work-based learning partnerships or for postsecondary credit or career certification; ~~and~~

(e) technology enhancements, including but not limited to any expenditure incurred for purposes specified in 20-9-533*; and*

(f) capital improvements and equipment necessary to support an innovative educational program.

(5) "Partnership" has the meaning provided in 15-30-2101.

(6) "Pass-through entity" has the meaning provided in 15-30-2101.

(7) "Qualified education provider" means an education provider that:

(a) is not a public school;

(b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or national accreditation organization; or

(ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing at the time of enrollment that the provider is not accredited and is not seeking accreditation;

(c) is not a home school as referred to in 20-5-102(2)(e);

(d) satisfies the health and safety requirements prescribed by law for private schools in this state; and

(e) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.

(8) "Small business corporation" has the meaning provided in 15-30-3301.

(9) "Student scholarship organization" means a charitable organization in this state that:

(a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3);

(b) allocates not less than 90% of its annual revenue from donations eligible for the tax credit under 15-30-3111 for scholarships to allow students to enroll with any qualified education provider; and

(c) provides educational scholarships to eligible students without limiting student access to only one education provider.

(10) "Taxpayer" has the meaning provided in 15-30-2101. (Terminates December 31, 2029--secs. 20 and 24(6), Ch. 480, L. 2021.)"

Section 3. Section 15-30-3110, MCA, is amended to read:

"~~**15-30-3110. (Temporary) Credit for providing supplemental funding to public schools -- innovative educational program.** (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a school district for the purpose of providing supplemental funding to the school district for innovative educational programs. The amount of the credit allowed is equal to the amount of the donation, not to exceed $200,000. A district shall deposit a donation made for an innovative educational program into the district's miscellaneous programs fund and shall limit the expenditure of the donation to expenditures for innovative educational programs of the district.~~

~~(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.~~

~~(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.~~

~~(3) The credit allowed under this section may not exceed the taxpayer's income tax liability but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.~~

~~(4) (a) (i) The aggregate amount of tax credits allowed under this section is $1 million per year in tax year 2022 and $2 million per year in tax year 2023 and subsequent tax years except as provided in this subsection (4)(a).~~

~~(ii) Beginning in 2023, by December 31 of each year, the department shall determine if 80% of the aggregate limit provided for in subsection (4)(a)(iii) in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 20% for the succeeding tax years.~~

~~(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (4)(a)(ii).~~

~~(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made regardless of whether the full credit is claimed in that tax year or carried forward.~~

~~(5) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:~~

~~(a) claiming a credit under this section instead of a deduction; or~~

~~(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.~~

~~(6) (a) On receiving a donation under this part, a school district shall seek preapproval, in a manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).~~

~~(b) On preapproval by the department, a school district shall issue a receipt, in a form prescribed by the department, to each contributing taxpayer indicating the value of the donation received and preapproval of the tax credit.~~

~~(c) A taxpayer shall provide a copy of the receipt when claiming the tax credit. (Terminates December 31, 2022, 2023, and 2024, on occurrence of contingency until June 30, 2025--secs. 23(7), 25, Ch. 480, L. 2021--see compiler's comment.)~~

~~**15-30-3110. (Temporary -- effective on occurrence of contingency) Credit for providing supplemental funding to public schools -- innovative educational program.** (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a school district for the purpose of providing supplemental funding to the school district for innovative educational programs. The amount of the credit allowed is equal to the amount of the donation, not to exceed $150. A district shall deposit a donation made for an innovative educational program into the district's miscellaneous programs fund and shall limit the expenditure of the donation to expenditures for innovative educational programs of the district.~~

~~(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.~~

~~(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.~~

~~(3) The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(4) (a) (i) The aggregate amount of tax credits allowed under this section is $1 million per year in tax year 2022 and $2 million per year in tax year 2023 and subsequent tax years except as provided in this subsection (4)(a).~~

~~(ii) Beginning in 2023, by December 31 of each year, the department shall determine if 80% of the aggregate limit provided for in subsection (4)(a)(iii) in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 20% for the succeeding tax years.~~

~~(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (4)(a)(ii).~~

~~(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made regardless of whether the full credit is claimed in that tax year or carried forward.~~

~~(5) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:~~

~~(a) claiming a credit under this section instead of a deduction; or~~

~~(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.~~

~~(6) (a) On receiving a donation under this part, a school district shall seek preapproval, in a manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).~~

~~(b) On preapproval by the department, a school district shall issue a receipt, in a form prescribed by the department, to each contributing taxpayer indicating the value of the donation received and preapproval of the tax credit.~~

~~(c) A taxpayer shall provide a copy of the receipt when claiming the tax credit.~~

15-30-3110. (Temporary ~~-- effective July 1, 2025~~) Credit for providing supplemental funding to public schools -- innovative educational program. (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a school district for the purpose of providing supplemental funding to the school district for innovative educational programs. The amount of the credit allowed is equal to the amount of the donation, not to exceed $200,000. ~~A district shall deposit a donation made for an innovative educational program into the district's miscellaneous programs fund and shall limit the expenditure of the donation to expenditures for innovative educational programs of the district.~~

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate

or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) (a) (i) The aggregate amount of tax credits allowed under this section is ~~$1 million per year in tax year 2022 and~~ $2 million per year in tax year 2023 *and $5 million per year in tax year 2024* and subsequent tax years except as provided in this subsection (4)(a).

(ii) Beginning in ~~2023~~ *2024*, by December 31 of each year, the department shall determine if 80% of the aggregate limit provided for in subsection (4)(a)(iii) in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 20% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (4)(a)(ii).

(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made regardless of whether the full credit is claimed in that tax year or carried forward.

(5) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(6) (a) On receiving a donation under this part, a school district shall seek preapproval, in a manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).

(b) On preapproval by the department, a school district shall issue a receipt, in a form prescribed by the department, to each contributing taxpayer indicating the value of the donation received and preapproval of the tax credit.

(c) A taxpayer shall provide a copy of the receipt when claiming the tax credit.

(7) (a) A school district may not retain donations under this section that exceed either:

(i) the greater of $50,000 or 15% of the school district's maximum general fund budget; or

(ii) 20% of the total aggregate amount provided for in subsection (4).

(b) If a school district receives donations that exceed the amounts provided for in subsection (7)(a), the school district shall remit the excess funds within 30 days to the superintendent of public instruction for deposit in the account provided for in [section 1].

(c) The superintendent of public instruction shall distribute funds received under subsection (7)(b) to school districts as described in [section 1]. A school district shall deposit funds received under this subsection (7)(c) into the school district flexibility fund and use them for out-of-pocket pupil costs provided for in 20-7-1506(5)(a).

(8) A school district shall deposit retained donations into the school district's miscellaneous programs fund and shall limit the expenditure of the donation to expenditures for innovative educational programs of the school district. (Terminates December 31, 2029--secs. 20, 24(6), Ch. 480, L. 2021.)"

Section 4. Section 15-30-3111, MCA, is amended to read:

"~~**15-30-3111. (Temporary) Qualified education tax credit for donations to student scholarship organizations.** (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate donations to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed $200,000.~~

~~(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.~~

~~(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.~~

~~(3) The credit allowed under this section may not exceed the taxpayer's income tax liability but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year~~

~~(4) (a) (i) The aggregate amount of tax credits allowed under this section is $1 million per year in tax year 2022 and $2 million per year in tax year 2023 and subsequent tax years except as provided in this subsection (4)(a).~~

~~(ii) Beginning in 2023, by December 31 of each year, the department shall determine if 80% of the aggregate limit provided for in subsection (4)(a)(iii) in tax credits was preapproved by the department. If this condition is satisfied, the aggregate limit of tax credits allowed must be increased by 20% for the succeeding tax years.~~

~~(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (4)(a)(ii).~~

~~(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made regardless of whether the full credit is claimed in that tax year or carried forward.~~

~~(5) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:~~

~~(a) claiming a credit under this section instead of a deduction; or~~

~~(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.~~

~~(6) (a) On receiving a donation under this part, a student scholarship organization shall seek preapproval, in a manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).~~

~~(b) On preapproval by the department, a student scholarship organization shall issue a receipt, in a form prescribed by the department, to each contributing~~

~~taxpayer indicating the value of the donation received and preapproval of the tax credit.~~

~~(c) A taxpayer shall provide a copy of the receipt when claiming the tax credit. (Terminates December 31, 2022, 2023, and 2024 on occurrence of contingency until June 30, 2025--secs. 23(7), 25, Ch. 480, L. 2021--see compiler's comment.)~~

~~**15-30-3111. (Temporary -- effective on occurrence of contingency) Qualified education tax credit for donations to student scholarship organizations.** (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate donations to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed $150.~~

~~(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.~~

~~(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.~~

~~(3) The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

~~(4) (a) (i) The aggregate amount of tax credits allowed under this section is $1 million per year in tax year 2022 and $2 million per year in tax year 2023 and subsequent tax years except as provided in this subsection (4)(a).~~

~~(ii) Beginning in 2023, by December 31 of each year, the department shall determine if 80% of the aggregate limit provided for in subsection (4)(a)(iii) in tax credits was preapproved by the department. If this condition is satisfied, the aggregate limit of tax credits allowed must be increased by 20% for the succeeding tax years.~~

~~(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (4)(a)(ii).~~

~~(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made regardless of whether the full credit is claimed in that tax year or carried forward.~~

~~(5) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:~~

~~(a) claiming a credit under this section instead of a deduction; or~~

~~(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.~~

~~(6) (a) On receiving a donation under this part, a student scholarship organization shall seek preapproval, in a manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).~~

~~(b) On preapproval by the department, a student scholarship organization shall issue a receipt, in a form prescribed by the department, to each contributing~~

~~taxpayer indicating the value of the donation received and preapproval of the tax credit.~~

~~(c) A taxpayer shall provide a copy of the receipt when claiming the tax credit.~~

15-30-3111. (Temporary ~~-- effective July 1, 2025~~) Qualified education tax credit for donations to student scholarship organizations. (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate donations to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed $200,000.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year

(4) (a) (i) The aggregate amount of tax credits allowed under this section is ~~$1 million per year in tax year 2022 and~~ $2 million per year in tax year 2023 *and $5 million per year in tax year 2024* and subsequent tax years except as provided in this subsection (4)(a).

(ii) Beginning in ~~2023~~ *2024*, by December 31 of each year, the department shall determine if 80% of the aggregate limit provided for in subsection (4)(a)(iii) in tax credits was preapproved by the department. If this condition is satisfied, the aggregate limit of tax credits allowed must be increased by 20% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (4)(a)(ii).

(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made regardless of whether the full credit is claimed in that tax year or carried forward.

(5) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(6) (a) On receiving a donation under this part, a student scholarship organization shall seek preapproval, in a manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under subsection (4).

(b) On preapproval by the department, a student scholarship organization shall issue a receipt, in a form prescribed by the department, to each contributing

taxpayer indicating the value of the donation received and preapproval of the tax credit.

(c) A taxpayer shall provide a copy of the receipt when claiming the tax credit. (Terminates December 31, 2029--secs. 20, 24(6), Ch. 480, L. 2021.)"

Section 5. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; *[section 1];* 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant

to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

Section 6. Section 23, Chapter 480, Laws of 2021, is amended to read:

"**Section 23. Effective date -- applicability.** (1) Except as provided in subsections (2) through ~~(7)~~*(4)*, [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) ~~[Sections 8 through 14]~~*[Sections 11 and 17]* are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

~~(5) [Sections 9 and 15] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.~~

~~(6) [Sections 10 and 16] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.~~

~~(7) [Sections 11 and 17] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025.~~"

Section 7. Section 24, Chapter 480, Laws of 2021, is amended to read:

"**Section 24. Termination.** (1) [Sections 7 and 13] terminate December 31, 2022.

~~(2) [Sections 8 and 14] terminate December 31, 2023.~~

~~(3) [Sections 9 and 15] terminate December 31, 2024.~~

~~(4) [Sections 10 and 16] terminate December 31, 2025.~~

~~(5) [Section 25] terminates January 1, 2025.~~

~~(6)~~*(2)* [Sections 1 through 6 and 11, 12, 17, and 18] terminate December 31, 2029."

Section 8. Repealer. Sections 8, 9, 10, 14, 15, 16, and 25, Chapter 480, Laws of 2021, are repealed.

Section 9. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 1].

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Applicability. [This act] applies to income tax years beginning after December 31, 2023.

Section 12. Termination. [Sections 1 through 5] terminate December 31, 2029.

Approved May 18, 2023

CHAPTER NO. 559

[HB 412]

AN ACT GENERALLY REVISING THE CODE OF ETHICS; EXPANDING AND CLARIFYING THE PROHIBITION ON THE USE OF PUBLIC RESOURCES FOR POLITICAL PURPOSES; REVISING THE DEFINITION OF "GIFT OF SUBSTANTIAL VALUE"; EXPANDING PORTIONS OF THE CODE OF ETHICS TO JUDICIAL OFFICERS; PROHIBITING THE USE OF THE GREAT SEAL OR OFFICIAL STATE LETTERHEAD FOR CERTAIN COMMUNICATIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-2-102, 2-2-103, 2-2-121, 2-2-136, AND 13-35-226, MCA.

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

Section 1. Use of public resources for political purposes. (1) Except as provided in this section, a judicial officer, public officer, legislator, or public employee may not use or permit the use of public time, facilities, equipment, state letterhead, 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:

(a) authorized by law;

(b) properly incidental to another activity required or authorized by law, such as the function of a judicial officer, public officer, legislator, or public employee in the normal course of duties; or

(c) reasonably considered to be also available to the public.

(2) As used in subsection (1), "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:

(a) the activities of a judicial officer, public officer, legislator, or public employee related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(b) 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) the activities of personal staff of legislative leadership who are exempt as provided in 2-18-104, related to assisting legislators in expressing opinions on a statewide ballot issue involving an initiative, referendum, or constitutional amendment.

(3) It is a properly incidental activity for personal staff of legislative leadership who are exempt as provided in 2-18-104 to support nonelection political caucus activity involving legislative business in the normal course of duties as directed by legislative leadership

(4) Subsection (1) is not intended to restrict the right of a judicial officer, public officer, legislator, or public employee to express personal political views.

(5) (a) 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 subsection (1) includes the chief's or officer's official highway patrol uniform.

(b) 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.

(6) A judicial officer, public officer, legislator, or public employee that violates this section may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401.

(7) Legislators are allowed limited use of public time, facilities, equipment, state letterhead, supplies, and personnel to:

(a) respond to inquiries or comments from the public, media, or government agencies;

(b) express opinions in any media or platform, including online and on social media; and

(c) publicly support or oppose statewide ballot issues or the nomination of a person to a public office.

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~~ *$100* 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) "Judicial officer" includes all judicial officers, justices, district court judges, and judges of the judicial branch of state government.

~~(4)~~*(5)* "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

~~(5)~~*(6)* "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)~~*(7)* "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)~~*(8)* "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)~~*(9)* "Public information" has the meaning provided in 2-6-1002.

~~(9)~~*(10)* (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.

~~(10)~~*(11)* "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.

~~(11)~~*(12)* (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.

(13) "State letterhead" means an electronic or written document that contains the great seal of the state provided for in 1-1-501 or purports to be a document from the state, a state agency, or a local government.

~~(12)~~*(14)* "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 3. Section 2-2-103, MCA, is amended to read:

"**2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of *judicial officers,* public officers, legislators, and public employees. A *judicial officer,* public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A *judicial officer,* public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) *judicial officers,* state officers, legislators, and state employees is provided for in 2-2-136;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government."

Section 4. 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)~~ *(6)*, use public time, facilities, equipment, *state letterhead,* 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)~~*(3)* (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, *state letterhead,* 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)~~*(4)* 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)~~*(5)* 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)~~*(6)* 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)~~*(7)* 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)~~*(8)* 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)~~*(9)* 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 5. 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 *judicial officer,* 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 *judicial officer if a judicial act is involved in the complaint or 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.

(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.

(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.

(2) (a) 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. 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.

(3) (a) Except as provided in subsection (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)~~*(3)(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.

(4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

Section 6. Section 13-35-226, MCA, is amended to read:

"**13-35-226. Unlawful acts of employers and employees.** (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not 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 while on the job or at the place of employment. However, subject to 2-2-121 *and [section 1]*, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

(5) A person who violates this section is liable in a civil action authorized by 13-37-128, brought by the commissioner of political practices or a county attorney pursuant to 13-37-124 and 13-37-125."

Section 7. 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].

Section 8. Coordination instruction. (1) If both House Bill No. 167 and [this act] are passed and approved and if House Bill No. 167 contains a section that amends 2-2-121(3)(b) to include a new subsection (3)(b)(ii), then the section in House Bill No. 167 amending 2-2-121 is void, and [section 1 of this act] is amended to include a new subsection (3) that must read as follows:

"*(3) It is a properly incidental activity for personal staff of legislative leadership who are exempt as provided in 2-18-104 to support nonelection political caucus activity involving legislative business in the normal course of duties as directed by legislative leadership.*"

(2) If Senate Bill No. 128 and [this act] are passed and approved and if Senate Bill No. 128 contains a section that amends 2-2-121(3)(b) to include a new subsection (3)(b)(ii), then the section in Senate Bill No. 128 amending

2-2-121 is void, and [section 1 of this act] is amended to include a new subsection (2)(c) that must read as follows:

"*(c) the activities of personal staff of legislative leadership who are exempt as provided in 2-18-104 related to assisting legislators in expressing opinions on a statewide ballot issue involving an initiative, referendum, or constitutional amendment.*"

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 18, 2023

CHAPTER NO. 560

[HB 433]

AN ACT CLARIFYING THAT STATE BUILDING CODE MAY NOT PROHIBIT THE USE OF CERTAIN REFRIGERANTS; AND AMENDING SECTION 50-60-203, MCA.

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

Section 1. Section 50-60-203, MCA, is amended to read:

"**50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.

(b) Rules concerning the conservation of energy must conform to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, except as provided in subsection (5), and may adopt rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances.

(5) The department may not include in the state building code a requirement for the installation of a fire sprinkler system in a single-family dwelling or a residential building that contains no more than two dwelling units.

(6) (a) The department shall, by rule, adopt by reference the most recently published edition of the national fire protection association's publication NFPA 99C for the installation of medical gas piping systems. The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of medical gas piping systems.

(b) A state, county, city, or town building code compliance officer shall, as part of any inspection, request proof of a medical gas piping installation endorsement from any person who is required to hold an endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement

violation to the inspector's employing agency, and the employing agency shall report the violation to the board of plumbers.

(7) The department may not prohibit or limit in the state building code the use of refrigerants listed as acceptable for use by the United States environmental protection agency pursuant to 42 U.S.C. 7671k as safe alternatives to class I and class II ozone-depleting substances. Any equipment containing the alternative refrigerant must be installed in accordance with applicable safety standards and use conditions as determined by the environmental protection agency."

Approved May 18, 2023

CHAPTER NO. 561

[HB 435]

AN ACT PROVIDING THAT THE CONSTRUCTION OF A WATER SUPPLY SYSTEM USING AN EXEMPT WATER RIGHT IS PROOF OF BENEFICIAL USE FOR ISSUANCE OF A CERTIFICATE OF WATER RIGHT; AMENDING SECTION 85-2-306, 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 85-2-306, MCA, is amended to read:

"**85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for

emergency fire protection, emergency fire training, and emergency fire-related operations, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(d) (i) Construction of a water supply system subject to Title 75, chapter 6, part 1, and use of a permit exception for the appropriation of water pursuant to this section is proof of beneficial use.

(ii) The department shall allocate a volume of 10 acre-feet a year to the system and issue a certificate of water right after the conditions in subsection (3)(d)(i) are met.

(iii) The department shall consider a water right as perfected after the conditions in subsection (3)(d)(i) are met.

(iv) When the appropriation is for a water supply system that is subject to Title 75, chapter 6, part 1, and is located outside of a stream depletion zone and does not exceed 10 acre-feet a year:

(A) For the purposes of subsection (3)(b)(i), the appropriation will be considered perfected upon completion of construction of the water supply system.

(B) A copy of the department of environmental quality approval for the water supply system must be submitted with the notice of completion. This section does not preclude the public water supply developer or any subsequent owners from

expanding the water system or from revising the water use restrictions within the subdivision, provided that the total amount does not exceed 10 acre-feet per year.

(C) Water appropriated under this exception must be measured and reported annually to the department.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators. [For purposes of an adverse effects determination under this subsection, the department may not consider adverse effects on any water right identified in a written consent to approval filed pursuant to 85-2-311.]

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation. (Bracketed language in subsection (7)(a) terminates September 30, 2023--sec. 8, Ch. 243, L. 2017.)"

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 water supply systems constructed after December 31, 2000.

Approved May 18, 2023

CHAPTER NO. 562

[HB 439]

AN ACT ASSESSING A GROSS VEHICLE WEIGHT FEE FOR PERMANENT REGISTRATION OF ELECTRIC VEHICLES AND PLUG-IN HYBRID ELECTRIC VEHICLES; PROVIDING FOR DEPOSIT OF THE GROSS VEHICLE WEIGHT PERMANENT REGISTRATION FEE IN THE HIGHWAY RESTRICTED ACCOUNT AS PROVIDED IN ARTICLE VIII, SECTION 6, OF THE MONTANA CONSTITUTION; AMENDING SECTION 61-3-562, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Gross vehicle weight permanent registration fee -- electric vehicles -- plug-in hybrid electric vehicles. (1) The permanent registration fee for an electric vehicle is based on unladen gross vehicle weight as follows:

(a) for a class 1 vehicle, $260;

(b) for a class 2 vehicle, $380.

(2) The permanent registration fee for a plug-in hybrid electric vehicle is based on gross vehicle weight as follows:

(a) for a class 1 vehicle, $140;

(b) for a class 2 vehicle, $200.

(3) As used in in this section, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Class 1 vehicle" means a vehicle having an unladen gross weight of less than 6,000 pounds.

(b) "Class 2 vehicle" means a vehicle having an unladen gross weight of at least 6,000 pounds but not more than 10,000 pounds.

(c) (i) "Electric vehicle" means a vehicle that:

(A) is originally equipped with a 100% electric motor that draws propulsion energy solely from a battery with at least 20 kilowatt hours of capacity that can be recharged from an external source of electricity;

(B) has at least four wheels; and

(C) is manufactured primarily for use on public streets, roads, and highways.

(ii) The term does not include:

(A) a low-speed electric vehicle; or

(B) a medium-speed electric vehicle.

(d) "Plug-in hybrid electric vehicle" means a vehicle that:

(i) is originally equipped so that the vehicle draws propulsion from an internal combustion engine and a battery with at least 5 kilowatt hours of capacity that can be recharged from an external source of electricity;

(ii) has at least four wheels; and

(iii) is manufactured primarily for use on public streets, roads, and highways.

Section 2. Section 61-3-562, MCA, is amended to read:

"**61-3-562. Permanent registration -- transfer of light vehicle ownership -- rules.** (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-321(2), may permanently

register the light vehicle upon payment of ~~a~~ *an* $87.50 registration fee, the applicable registration and license fees under 61-3-412, if applicable, the administrative fee and the annual one-time-only donation fee for a generic specialty license plate under 61-3-480 or collegiate license plates under 61-3-465, *the fee provided for in [section 1] for an electric vehicle or a plug-in hybrid electric vehicle, if applicable,* and an amount equal to five times the local option motor vehicle tax or flat fee on vehicles under 61-3-537 and, as applicable, either:

(i) (A) the original fee and four times the renewal fee for personalized plates; or

(B) five times the renewal fees for personalized plates; or

(ii) if a new set of license plates is not being issued, an insurance verification fee of $5, which must be deposited in the account established under 61-6-158.

(b) The following series of license plates may not be used for purposes of permanent registration of a light vehicle:

(i) Montana national guard license plates issued under 61-3-458(2)(b);

(ii) reserve armed forces license plates issued under 61-3-458(2)(c); and

(iii) amateur radio operator license plates issued under 61-3-422.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a motor vehicle that is permanently registered under this section is not subject to additional registration fees or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall once each month remit to the state the amounts collected under this section, other than the local option motor vehicle tax or flat fee *and the fee collected pursuant to [section 1]*, for the purposes of 61-3-321(2) and 61-10-201. The county treasurer shall retain the local option motor vehicle tax or flat fee. *The county treasurer or an authorized agent shall transmit the fee collected pursuant to [section 1] to the state as provided in 15-1-504 for deposit to the credit of the department in the highway restricted account provided for in 15-70-126.*

(5) (a) The permanent registration of a light vehicle allowed by this section may not be transferred to a new owner. If the light vehicle is transferred to a new owner, the department shall cancel the light vehicle's permanent registration.

(b) Upon transfer of a light vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and 61-3-216 and register the light vehicle under 61-3-303."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [section 1].

Section 4. Coordination instruction. If both House Bill No. 60 and [this act] are passed and approved, then [section 1 of this act] must be amended to read as follows:

"NEW SECTION. **Section 1. Gross vehicle weight permanent registration fee -- electric vehicles -- plug-in hybrid electric vehicles.** (1) The permanent registration fee for an electric vehicle is based on unladen gross weight as follows:

(a) for a class 1 vehicle, $260;

(b) for a class 2 vehicle, $380.

(2) The permanent registration fee for a plug-in hybrid electric vehicle is based on gross vehicle weight as follows:

(a) for a class 1 vehicle, $140;
(b) for a class 2 vehicle, $200."

Section 5. Effective date. [This act] is effective January 1, 2024.

Approved May 18, 2023

CHAPTER NO. 563

[HB 447]

AN ACT PROVIDING FOR EXCEPTIONS TO IMPOSITION OF INCOME TAX ON CERTAIN NONRESIDENTS AND WITHHOLDING BY CERTAIN EMPLOYERS FOR NONRESIDENT INCOME IN THE STATE; PROVIDING EXCEPTIONS TO EMPLOYER WITHHOLDING PENALTIES; AMENDING SECTIONS 15-30-2104, 15-30-2502, 15-30-2503, 15-30-2504, AND 15-30-2602, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Nonresident compensation -- exclusion. (1) Except as provided in subsection (2), compensation subject to withholding pursuant to Title 15, chapter 30, part 25, without regard to [section 2], that is received by a nonresident for employment duties performed in this state, is excluded from Montana source income if:

(a) the nonresident performed employment duties in more than one state during the year; and

(b) the nonresident is present in this state to perform employment duties for not more than 30 days during the tax year in which the compensation is received, where presence in this state for any part of a day constitutes presence for that day unless the presence is purely for purposes of transit through the state.

(2) This section does not apply to compensation received by a person:

(a) who is a professional athlete or member of a professional athletic team;

(b) who is a professional entertainer who performs services in the professional performing arts;

(c) of prominence who performs services for compensation on a per-event basis;

(d) who receives lottery winnings on a lottery ticket purchased in Montana;

(e) who performs construction services to improve real property, predominantly on construction sites, as a laborer;

(f) who is a key employee for the year immediately preceding the current tax year; or

(g) who is a qualified production employee.

(3) This section does not prevent the operation, renewal, or initiation of any agreement with the taxing authorities of states contiguous to this state pursuant to 15-30-2621.

(4) This section creates an exclusion from nonresident compensation under certain de minimis circumstances and has no application to this state's jurisdiction to impose a tax under this chapter or any other tax imposed in this state on a taxpayer;

(5) For the purpose of this section, the following definitions apply:

(a) "Key employee" means an individual who, for the year immediately preceding the current tax year, had annual compensation from the employer of greater than $500,000.

(b) "Qualified production employee" means a person who performs production services of any nature:

(i) directly in connection with a qualified production activity, as that term is defined under 15-31-1003; and

(ii) for compensation, provided the compensation paid to the person qualifies as compensation under 15-31-1003.

(c) "State of residence" means the 50 states of the United States, the District of Columbia, and any territory or possession of the United States.

Section 2. Withholding from compensation -- exception. (1) No amount is required to be deducted or retained from compensation paid to a nonresident for employment duties performed in this state if the compensation is excluded from Montana source income pursuant to [section 1], without regard to [section 1(1)(a)]. The number of days a nonresident employee is present in this state for purposes of [section 1(1)(b)] includes all days the nonresident employee is present and performing employment duties in this state on behalf of the employer or any subsidiary, division, agent, or contractor of the employer.

(2) An employer that has erroneously applied the exception provided by this section solely as a result of miscalculating the number of days a nonresident employee is present in this state to perform employment duties is not subject to penalties imposed under 15-30-2503 and 15-30-2509 if:

(a) the employer relied on a regularly maintained time and attendance system that:

(i) requires the employee to record, on a contemporaneous basis, the employee's work location each day the employee is present in a state other than:

(A) the state of residence; or

(B) where services are considered performed for purposes of unemployment insurance benefits, as provided in Title 39, chapter 51; and

(ii) is used by the employer to allocate the employee's wages between all taxing jurisdictions where the employee performs duties;

(b) the employer does not maintain a time and attendance system described in subsection (2)(a) and relied on employee travel records that the employer requires the employee to maintain and record on a regular and contemporaneous basis; or

(c) the employer does not maintain a time and attendance system described in subsection (2)(a), or require the maintenance of employee records described in subsection (2)(b), and relied on travel expense reimbursement records that the employer requires the employee to submit on a regular and contemporaneous basis.

(3) This section establishes an exception to withholding and deduction requirements and has no application to the imposition of this state's jurisdiction to impose a tax under this chapter or any other tax on any taxpayer.

Section 3. Section 15-30-2104, MCA, is amended to read:

"**15-30-2104. (Temporary) Tax on nonresident.** (1) (a) A tax is imposed upon each nonresident equal to the tax computed under 15-30-2103 as if the nonresident were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-2103 and subsection (1)(a) of this section. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact.

15-30-2104. (Effective January 1, 2024) Tax on nonresident. (1) (a) ~~A~~ *Except as provided in [section 1], a* tax is imposed upon each nonresident individual, estate, or trust equal to the tax computed under 15-30-2103 as if the nonresident individual, estate, or trust were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.

(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-2103 and subsection (1)(a) of this section. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 4. Section 15-30-2502, MCA, is amended to read:

"**15-30-2502. Withholding of tax from wages.** (1) ~~Each~~ *Except as provided in [section 2], each* employer making payment of wages shall withhold from wages a tax determined in accordance with the withholding tax tables prepared and issued by the department.

(2) An employer who maintains two or more separate establishments within this state is considered to be a single employer for the purposes of this part.

(3) A disregarded entity and its owner are considered to be a single employer for the purposes of this part."

Section 5. Section 15-30-2503, MCA, is amended to read:

"**15-30-2503. Employer liable for withholding taxes and statements.** (1) ~~Each~~ *Except as provided in [section 2], each* employer is liable for the payments required by 15-30-2504, the amounts required to be deducted and withheld under this part, and the annual statements required by 15-30-2506 and 15-30-2507. The payments required by 15-30-2504 and the amounts required to be deducted and withheld, plus interest due, are a tax. With respect to the tax, the employer is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Each officer of the corporation is individually liable along with the corporation for filing statements to the extent that the officer has access to the requisite records 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 tax 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.

(b) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate 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 corporation.

(5) For the purpose of determining liability for the filing of statements and the remittance of taxes, penalties, and interest owed under this part:

(a) 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;

(b) 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;

(c) 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

(d) 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.

(6) If the employer fails to deduct and withhold the amounts specified in 15-30-2502 and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer."

Section 6. Section 15-30-2504, MCA, is amended to read:

"**15-30-2504. Schedules for remitting income withholding taxes -- records.** (1) Subject to the due date provision in 15-30-2604(1)(b) *and the nonresident exclusion in [section 2]*, an employer shall remit the taxes withheld from employee wages as follows:

(a) An employer whose total liability for state income tax withholding during the preceding lookback period was $12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.

(b) An employer whose total liability for state income tax withholding during the preceding lookback period was less than $12,000 but more than $1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) An employer whose total liability for state income tax withholding during the preceding lookback period was less than $1,200 shall remit on an "annual schedule" for which the remittance due date is on or before January 31 of the year following payment of wages.

(d) An employer who has no withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted.

(2) An employer who has not complied with the requirements of this section shall, upon written notice from the department, remit on the monthly schedule described in subsection (1)(b).

(3) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.

(4) A new employer or an employer with no filing history is subject to the monthly remittance schedule in subsection (1)(b) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(5) An employer may elect to remit payments on a more frequent basis than is required by subsection (1).

(6) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.

(7) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.

(8) Each employer shall keep accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense."

Section 7. Section 15-30-2602, MCA, is amended to read:

"**15-30-2602. (Temporary) Returns and payment of tax -- penalty and interest -- refunds -- credits -- inflation adjustment.** (1) For both resident and nonresident taxpayers, each individual or each married couple not filing a joint return and having a gross income for the tax year of more than the maximum standard deduction for that filing status, as determined in 15-30-2132, is liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in this subsection (1) must be increased by the personal exemption allowance determined in 15-30-2114 for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-2114(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with a husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with the husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and, subject to 15-30-2646, the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-2502 and 15-30-2512, shall compute the amount of income tax payable and shall, on or before the date required by this chapter for filing a return, pay

to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-2502, and any payment made by reason of an estimated tax return provided for in 15-30-2512. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) If the department determines that the amount of tax due is greater than the amount of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-2642 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

(6) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year.

15-30-2602. (Effective January 1, 2024) Returns and payment of tax -- penalty and interest -- refunds -- credits. (1) (a) If required to file a federal income tax return pursuant to the Internal Revenue Code, each individual, including each nonresident with Montana source income *that is not eligible for the nonresident exclusion in [section 1]*, or each estate or trust shall file a return on forms and according to rules that the department may prescribe.

(b) A taxpayer that is not required to file a federal income tax return shall file a Montana return if the taxpayer has Montana taxable income after taking into consideration the additions and subtractions to federal taxable income in 15-30-2120.

(2) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(3) ~~All~~ *Except as provided in [section 1], all* taxpayers, including but not limited to those subject to the provisions of 15-30-2502 and 15-30-2512, shall compute the amount of income tax payable and shall, on or before the date required by this chapter for filing a return, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-2502, and any payment made by reason of an estimated tax return provided for in 15-30-2512. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(4) If the department determines that the amount of tax due is greater than the amount of tax computed by the taxpayer on the return, the department shall mail a notice to the taxpayer as provided in 15-30-2642 of the additional tax proposed to be assessed, including penalty and interest as provided in 15-1-216.

(5) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the Montana income tax structure for that tax year."

Section 8. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 21, and the provisions of Title 15, chapter 30, part 21, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 25, and the provisions of Title 15, chapter 30, part 25, apply to [section 2].

Section 9. Effective date. [This act] is effective January 1, 2024.

Section 10. Applicability. [This act] applies to income tax years beginning after December 31, 2023.

Approved May 18, 2023

CHAPTER NO. 564

[HB 452]

AN ACT GENERALLY REVISING UNIFORM LAWS RELATED TO TRUSTS AND PROBATE; CLARIFYING THE REQUIREMENTS OF A PERSONAL REPRESENTATIVE REGARDING INVENTORY AND APPRAISAL OF A DECEDENT'S PROPERTY; PROVIDING DEFINITIONS; CLARIFYING REQUIREMENTS FOR PROVIDING NOTICE; CLARIFYING PARTIES TREATED AS QUALIFIED BENEFICIARIES OF CHARITABLE TRUSTS; CLARIFYING THE TERMS AND CONDITIONS THAT AFFECT THE VALIDITY OF A NONJUDICIAL SETTLEMENT AGREEMENT; CLARIFYING THAT FOR PURPOSES OF MODIFYING AN IRREVOCABLE TRUST BY THE CONSENT OF THE QUALIFIED BENEFICIARIES, A SPENDTHRIFT PROVISION IN THE TRUST INSTRUMENT IS NOT PRESUMED TO CONSTITUTE A MATERIAL PURPOSE OF THE TRUST; AND AMENDING SECTIONS 72-1-103, 72-3-607, 72-38-109, 72-38-110, 72-38-111, AND 72-38-411, MCA.

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

Section 1. Section 72-1-103, MCA, is amended to read:

"**72-1-103. General definitions.** Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "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.

(44) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(45) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(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.

(47) "Special administrator" means a personal representative as described by chapter 3, part 7.

(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(51) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(52) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(54) "Testator" includes an individual of either sex.

(55) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(57) "Verification" has the meaning provided in 25-4-203 and may be proved by an unsworn written verification in accordance with 1-6-105.

~~(57)~~*(58)* "Ward" means an individual described in 72-5-101.

~~(58)~~*(59)* "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 2. Section 72-3-607, MCA, is amended to read:

"**72-3-607. Inventory -- appraisal.** (1) Within 9 months after appointment, a personal representative who is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare an inventory of *probate* property owned by the decedent at the time of the decedent's death, listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.

(2) The inventory must include a statement of the fair market value of the decedent's interest in every item listed in the inventory. The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser must be indicated on the inventory with the item or items appraised.

(3) The personal representative shall:

(a) send a copy of the inventory to the following who request it: heirs, devisees, and creditors with allowed claims that have not been satisfied; or

(b) file the original of the inventory with the court and send a copy of the inventory to interested persons who request it.

(4) An heir, devisee, creditor, and any other interested person may waive their right to receive a copy of the inventory by executing a written waiver that is delivered to the personal representative. For the purposes of subsection (3)(a), the personal representative is considered to have sent a copy of the inventory to the waiving party.

(5) The personal representative may prepare a list of all property owned by the decedent at the time of decedent's death, including both probate and nonprobate property, the fair market value and nature of the decedent's interest in the property on the date of the decedent's death, and the name of each nonprobate transferee.

(6) Unless the court orders otherwise after notice and hearing, within 90 days of a demand by the decedent's spouse who has a right to election under 72-2-232 and whose right has not expired pursuant to 72-2-241, the personal representative who is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare a list of all property owned by the decedent at the time of decedent's death, including both probate and nonprobate property, the fair market value and nature of the decedent's interest in the property on the date of the decedent's death, and the name of each nonprobate transferee, in each case, to the extent known or reasonably discoverable by the personal representative, and shall mail a copy of the list to the surviving spouse who has demanded it.

(7) The personal representative has authority to acquire information necessary to complete the inventory described in subsection (1) and to complete the list described in subsections (5) and (6). Parties providing the information requested by the personal representative are discharged from all liability for doing so. The personal representative is discharged from all liability for disclosing the information necessary to fulfill the personal representative's duties and for disclosing the information to the surviving spouse under subsection (5)."

Section 3. Section 72-38-109, MCA, is amended to read:

"**72-38-109. Methods and waiver of notice.** (1) (a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.

(b) Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

(c) Notice of at least 30 days prior to the event for which notice is given ~~must be~~ *is considered to be* reasonable unless otherwise specifically provided in this chapter.

(2) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(3) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(4) Notice of a judicial proceeding must be given as provided in 72-38-208 through 72-38-212."

Section 4. Section 72-38-110, MCA, is amended to read:

"**72-38-110. Others treated as qualified beneficiaries.** (1) Except ~~for~~ *as provided in* 72-38-813, whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(2) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a beneficiary and a qualified beneficiary under this chapter if the charitable organization, on the date the charitable organization's qualification is being determined:

(a) is a distributee or permissible distributee of trust income or principal;

(b) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(3) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in 72-38-408 or 72-38-409 has the rights of a qualified beneficiary under this chapter.

(4) With respect to a charitable trust having its principal place of administration in this state:

(a) The attorney general of this state has the rights of a beneficiary.

(b) The attorney general of this state has the following two rights of a qualified beneficiary:

(i) the right to request information pursuant to 72-38-813(1); and

(ii) the right to request a copy of the annual report pursuant to 72-38-813(3).

(c) The attorney general of this state has all of the rights of a qualified beneficiary *of a charitable trust* if, on the date that a determination is being made as to the rights of the attorney general under this subsection*:(4), a charitable interest in the trust is not represented by a qualified beneficiary under subsection (2).*

~~(i) any charitable organization:~~

~~(A) is a distributee or permissible distributee of trust income or principal; or~~

~~(B) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date; and~~

~~(ii) no charitable organization expressly designated to receive distributions under the terms of the charitable trust:~~

~~(A) is a distributee or permissible distributee of trust income or principal; or~~

~~(B) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.~~"

Section 5. Section 72-38-111, MCA, is amended to read:

"**72-38-111. Nonjudicial settlement agreements.** (1) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(2) Except as otherwise provided in subsection (3), interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) ~~Except as provided in 72-38-411(1), a~~ *A* nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter.

(4) Matters that may be resolved by a nonjudicial settlement agreement include but are not limited to:

(a) the interpretation or construction of the terms of the trust;

(b) the approval of a trustee's report or accounting;

(c) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(d) the resignation or appointment of a trustee and the determination of a trustee's compensation;

(e) transfer of a trust's principal place of administration; and

(f) liability of a trustee for an action relating to the trust.

(5) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Title 72, chapter 38, part 3, was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved."

Section 6. Section 72-38-411, MCA, is amended to read:

"**72-38-411. Modification or termination of irrevocable trust by consent.** (1) An irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material noncharitable purpose of the trust. Modification or termination of a charitable trust requires the consent of the attorney general. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney and the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed. This subsection does not apply to irrevocable trusts created before or to revocable trusts that became irrevocable before October 1, 1989.

(2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

Modification or termination of a charitable trust requires the consent of the attorney general.

(3) ~~A~~ *For the purposes of this section, a* spendthrift provision in the terms of the trust is *not* presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust under subsection (1) or (2), the trustee shall distribute the trust property as agreed by the beneficiaries. In the case of a charitable trust, the trust property must be distributed in accord with the terms of the trust, and in the absence of applicable terms, consistent with the charitable purposes of the trust as agreed by the attorney general and the beneficiaries or, if there are no charitable organizations with the rights of a beneficiary and the termination is pursuant to subsection (1), then as agreed by the settlor and the attorney general, but if the termination is pursuant to subsection (2), then as decided by the court.

(5) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (1) or (2), the modification or termination may be approved by the court if the court is satisfied that:

(a) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(b) the interests of a beneficiary who does not consent will be adequately protected."

Approved May 18, 2023

CHAPTER NO. 565

[HB 455]

AN ACT REMOVING THE DEPARTMENT OF REVENUE'S PROHIBITION ON APPROVING GELATIN CUP ALCOHOLIC BEVERAGE PRODUCTS; AMENDING SECTION 16-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, ARM 42.11.402 and 42.13.201 specifically prohibit the approval of gelatin cup alcoholic products for use in Montana and the amendment to section 16-1-303, MCA, seeks to have the department remove that prohibition.

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

Section 1. Section 16-1-303, MCA, is amended to read:

"**16-1-303. Department rules.** (1) The department and the department of justice may make rules not inconsistent with this code necessary to efficiently administer this code.

(2) Rules made by the department may include but are not limited to the following:

(a) regulating the contractual operation of agency liquor stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept;

(b) prescribing the duties of department employees and regulating their conduct while in the discharge of their duties;

(c) governing the purchase of liquor and the furnishing of liquor to agency liquor stores;

(d) determining the classes, varieties, and brands of liquor to be available for distribution from the state liquor warehouse*, however, the department may not prohibit liquor that is sold in gelatin cups that are shelf stable and liquid at room temperature and may not prohibit the distribution of beer and table wine by a beer wholesaler or table wine distributor that are sold in gelatin cups that are shelf stable and liquid at room temperature*;

(e) prescribing the minimum hours during which agency liquor stores must be open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor kept for sale;

(g) prescribing forms to be used for the purpose of this code or the rules and the terms and conditions for permits and licenses issued and granted under this code;

(h) prescribing the form of records of purchase of liquor and the reports to be made to the department and providing for inspection of the records;

(i) prescribing the manner of giving and serving notices required by this code or the rules;

(j) prescribing the fees payable for permits and licenses issued under this code for which fees are not prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules;

(k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to be made by the licensees;

(l) specifying and describing the place and the manner in which alcoholic beverages may be lawfully kept or stored;

(m) specifying and regulating the time when and the manner by which vendors and brewers may deliver alcoholic beverages under this code and the time when and the manner by which alcoholic beverages, under this code, may be lawfully conveyed or carried;

(n) governing the conduct, management, and equipment of any premises licensed to sell alcoholic beverages under this code;

(o) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) The department of justice may adopt rules to administer and implement its responsibilities under this title, including but not limited to rules providing for the inspection of licensed premises or premises where the sale of liquor has been proposed.

(4) Whenever this code provides that an act may be done if authorized by rules, the department, subject to the restrictions in subsection (1), may make rules respecting the act.

(5) The department shall use the negotiated rulemaking procedures contained in Title 2, chapter 5, for the purpose of adoption of rules related to the operation of agency liquor stores. However, the department may not be required to pay any expenses of the participants or of any persons engaged in the rulemaking process as provided for in 2-5-110."

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

Approved May 18, 2023

CHAPTER NO. 566

[HB 460]

AN ACT REVISING PROVISIONS FOR TRANSFERRING HARD ROCK MINING PERMITS UNDER CERTAIN CONDITIONS; CLARIFYING TIMELINES; AMENDING SECTION 82-4-341, MCA; REPEALING SECTION 6, CHAPTER 458, LAWS OF 2019; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 82-4-341, MCA, is amended to read:

"**82-4-341. ~~(Temporary)~~ Compliance -- reclamation by department.** (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection (9). Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in 82-4-336 and in this section for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable after notice and hearing, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The department shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands according to the existing reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless otherwise agreed to in writing by the surety.

(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within

a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

(8) (a) Except as provided in subsection (8)(e), the department may hold a permit suspended pursuant to 82-4-338 for up to 5 years and place the proceeds from a cash bond forfeited under this section in an interest-bearing account if mining of the ore body identified in the permit or a permit amendment application is not complete. *The 5-year period begins on the date the department takes possession of the bond proceeds.*

(b) The department may spend bond proceeds from the account during the suspension period to:

(i) perform maintenance, monitoring, and other actions required by the permit;

(ii) abate imminent danger to public health, public safety, or the environment; or

(iii) abate conditions that violate the provisions of Title 75, chapters 2 and 5, or conditions that may cause violations of those provisions.

(c) The department may transfer a permit suspended under this section as provided by 82-4-340. The balance of funds in the account must be retained as a cash bond on behalf of the successor operator.

(d) The department may revoke a permit suspended under this section if a transfer is not completed within 5 years of the suspension. In the case of a revoked permit, reclamation may proceed pursuant to subsection (6).

(e) The department may extend a suspension up to 6 months if a potential successor operator is exercising reasonable diligence to complete the transfer. If litigation precludes the transfer, the suspension is stayed until the litigation is resolved.

(9) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.

(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation. ~~(Terminates June 30, 2026--sec. 6, Ch. 458, L. 2019.)~~

~~82-4-341. (Effective July 1, 2026) Compliance -- reclamation by department.~~ ~~(1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.~~

~~(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection (8). Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in 82-4-336 and in this section for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.~~

~~(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable after notice and hearing, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.~~

~~(4) The department shall cause the bond to be forfeited if:~~

~~(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;~~

~~(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or~~

~~(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.~~

~~(5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.~~

~~(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands according to the existing reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless otherwise agreed to in writing by the surety.~~

~~(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or~~

~~license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.~~

~~(8) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.~~

~~(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation.~~"

Section 2. Repealer. Section 6, Chapter 458, Laws of 2019, is repealed.

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

Approved May 18, 2023

CHAPTER NO. 567

[HB 470]

AN ACT REVISING MOTOR VEHICLE LAWS; REVISING LAWS REGARDING YIELDING TO MOVING EMERGENCY VEHICLES; REVISING LAWS REGARDING SLOWING DOWN AND MOVING OVER FOR STATIONARY EMERGENCY VEHICLES AND HIGHWAY WORKER VEHICLES; REVISING RECKLESS ENDANGERMENT OF EMERGENCY PERSONNEL; REVISING RECKLESS ENDANGERMENT OF HIGHWAY WORKERS; PROVIDING DEFINITIONS; AMENDING SECTIONS 61-8-301, 61-8-321, 61-8-715, 61-9-402, AND 61-9-431, MCA; AND REPEALING SECTION 61-8-346, MCA.

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

Section 1. Short title. [Sections 1 through 6] may be cited as the "Yield -- Slow Down -- Move Over Act".

Section 2. Definitions. As used in [sections 3 through 6], the following definitions apply:

(1) "Emergency lights" means:

(a) for a law enforcement vehicle or an authorized emergency vehicle, visual signals meeting the requirements of 61-9-402; and

(b) for a highway worker vehicle, visible signals of flashing or rotating amber, red, or green lights.

(2) "Highway worker vehicle" means a vehicle authorized to work within a public highway. The term also includes a tow truck, a snow plow, or any other vehicle with additional lighting equipment activated in addition to its original equipment manufacturer lights.

(3) "Highway worker" means an employee of the department of transportation, a local authority, or any other entity authorized to work on

a public highway when operating or working within 100 feet of a highway worker vehicle using its emergency lights.

(4) "Siren" means an audible signal meeting the requirements of 61-9-402.

Section 3. Yielding to moving emergency vehicle. When being approached by a law enforcement vehicle or authorized emergency vehicle using its siren or emergency lights, the operator of a moving vehicle, unless otherwise directed by a law enforcement officer, shall:

(1) yield the right-of-way to the law enforcement vehicle or authorized emergency vehicle; and

(2) unless already stationary and out of the way of the law enforcement vehicle or authorized emergency vehicle:

(a) drive cautiously to a position that is parallel to and as close as possible to the right-hand edge or curb of the roadway and is not in an intersection; and

(b) remain stationary until the law enforcement vehicle or authorized emergency vehicle has passed.

Section 4. Approaching stationary emergency vehicle or stationary highway worker vehicle. When approaching a stationary law enforcement vehicle or authorized emergency vehicle using its siren or emergency lights or a stationary highway worker vehicle using its emergency lights, the operator of a moving vehicle shall:

(1) cautiously and carefully reduce the vehicle's speed to the temporary posted speed limit. If a temporary speed limit has not been posted, the operator of a moving vehicle shall reduce the vehicle's speed to a speed:

(a) 20 miles an hour below the posted speed limit on the interstate if the operator of a moving vehicle is able to move lanes, or to one-half the posted speed limit if the operator of a moving vehicle is not able to move lanes;

(b) 30 miles an hour below the posted speed limit on a state highway or county road if the operator of a moving vehicle is able to move lanes, or to one-half the posted speed limit if the operator of a moving vehicle is not able to move lanes; and

(c) one-half the posted speed limit on any other road; and

(2) follow flagger instructions or instructions on a temporary sign board. If flaggers or a temporary sign board are not yet posted:

(a) if on a multi-lane highway, move to a lane that is not adjacent to the lane in which the stationary law enforcement vehicle, authorized emergency vehicle, or highway worker vehicle is located; or

(b) move over as far as safely possible under the circumstances.

Section 5. Reckless endangerment of emergency personnel -- reckless endangerment of highway workers. (1) (a) An operator of a vehicle who violates [section 4] when an emergency vehicle is stationary and using its emergency lights or siren commits the offense of reckless endangerment of emergency personnel.

(b) An operator of a vehicle who violates [section 4] when a highway worker vehicle is stationary and using its emergency lights commits the offense of reckless endangerment of highway workers.

(2) An operator of a vehicle commits the offense of reckless endangerment of highway workers if the person purposely, knowingly, or negligently drives a motor vehicle in a highway work zone, as defined in 61-8-314, in a manner that endangers persons or property or if the person purposely removes, ignores, or intentionally strikes an official traffic control device in a work zone for reasons other than:

(a) avoidance of an obstacle;

(b) an emergency; or

(c) to protect the health and safety of an occupant of the vehicle or of another person.

(3) Reckless endangerment of emergency personnel or reckless endangerment of highway workers is punishable under 61-8-715.

Section 6. Duty of emergency driver -- duty of highway worker. (1) [Sections 3 and 4] do not relieve the driver of a law enforcement vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(2) [Section 4] does not relieve a highway worker of the duty to take standard safety precautions or to behave reasonably under the circumstances.

Section 7. Section 61-8-301, MCA, is amended to read:

"**61-8-301. Reckless driving ~~-- reckless endangerment of highway worker~~.** (1) A person commits the offense of reckless driving if the person:

(a) operates a vehicle in willful or wanton disregard for the safety of persons or property; or

(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection (1)(b) does not apply to situations described in 61-8-351(7).

(2) A municipality may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving or of reckless endangerment of a highway worker is subject to the penalties provided in 61-8-715.

~~(4) (a) A person commits the offense of reckless endangerment of a highway worker if the person purposely, knowingly, or negligently drives a motor vehicle in a highway work zone in a manner that endangers persons or property or if the person purposely removes, ignores, or intentionally strikes an official traffic control device in a work zone for reasons other than:~~

~~(i) avoidance of an obstacle;~~

~~(ii) an emergency; or~~

~~(iii) to protect the health and safety of an occupant of the vehicle or of another person.~~

~~(b) As used in this section:~~

~~(i) "highway worker" means an employee of the department of transportation, a local authority, a utility company, or a private contractor; and~~

~~(ii) "work zone" has the meaning provided in 61-8-314.~~"

Section 8. 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~~ *[section 3 or 4]*;

(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 60-1-103, 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 9. Section 61-8-715, MCA, is amended to read:

"**61-8-715. Reckless driving -- ~~reckless endangerment of highway workers --~~ reckless endangerment of emergency personnel *or highway workers* -- penalty.** (1) Except as provided in subsection (2), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(b)~~, convicted of reckless endangerment of a highway worker under 61-8-301(4)~~*, convicted of reckless endangerment of a highway worker under [section 5],* or convicted of reckless endangerment of emergency personnel *or reckless endangerment of highway workers* under ~~61-8-346~~ *[section 5]* shall be punished ~~upon~~ *on* a first conviction by imprisonment for a term of not more than 90 days, a fine of not less than $100 or more than $500, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, a fine of not less than $500 or more than $1,000, or both.

(2) A person who is convicted of reckless driving under 61-8-301 or convicted of reckless endangerment of emergency personnel *or reckless endangerment of highway workers* under ~~61-8-346~~ *[section 5]* and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding $10,000, incarceration for a term not to exceed 1 year, or both."

Section 10. Section 61-9-402, MCA, is amended to read:

"**61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles -- immunity.** (1) A police

vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) (a) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front at least two red and two amber alternating flashing lights and to the rear at least two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(b) Additional red flashing lights may be mounted to the front and to the rear at a height of at least 36 inches and not more than 72 inches from the ground. If additional red lights are mounted, they must be installed so that they can be actuated only if the school bus is stopped.

(c) The specifications for the warning lights must be prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(5) The use of signal equipment as described in this section imposes upon the operators of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light as provided in ~~61-8-346~~ *[sections 4 and 5]* and subject to the provisions of 61-8-209 and 61-8-303.

(6) An employee, agent, or representative of the state or a political subdivision of the state or of a governmental fire agency organized under Title 7, chapter 33, who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (5).

(7) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and be capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles, as defined in 61-8-102, may display blue lights, lenses, or globes.

(8) A police vehicle and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal

sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(9) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(10) A violation of subsection (5) is considered reckless endangerment of a highway worker, as provided in ~~61-8-301(4)~~ *[section 5(2)]*, and is punishable as provided in 61-8-715."

Section 11. Section 61-9-431, MCA, is amended to read:

"**61-9-431. Use of warning signs, flares, reflectors, lanterns, and flag persons.** (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway exclusive of the berm or shoulder, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange or reflectorized fluorescent pink background and black border, as prescribed by the department. The signs must be designed to be visible both during the day and at night. The warning signs must bear the words "accident ahead", "emergency vehicle ahead", "lane closed ahead", "road closed ahead", "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of a highway worker, as provided in ~~61-8-301(4)~~ *[section 5(2)]*, and is punishable as provided in 61-8-715."

Section 12. Repealer. The following section of the Montana Code Annotated is repealed:

61-8-346. Operation of vehicles on approach of authorized emergency vehicles or law enforcement vehicles -- approaching stationary emergency vehicles or law enforcement vehicles -- reckless endangerment of emergency personnel.

Section 13. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [sections 1 through 6].

Section 14. Coordination instruction. If both House Bill No. 374 and [this act] are passed and approved, House Bill No. 374 contains sections amending 61-8-346 and 61-8-715, and [this act] contains a section repealing 61-8-346, then [section 3 of this act] must be amended as follows:

"NEW SECTION. **Section 3. Yielding to moving emergency vehicle.** *(1)* When being approached by a law enforcement vehicle or authorized emergency vehicle using its siren or emergency lights, the operator of a moving vehicle, unless otherwise directed by a law enforcement officer, shall:

~~(1)~~*(a)* yield the right-of-way to the law enforcement vehicle or authorized emergency vehicle; and

~~(2)~~*(b)* unless already stationary and out of the way of the law enforcement vehicle or authorized emergency vehicle:

~~(a)~~*(i)* drive cautiously to a position that is parallel to and as close as possible to the right-hand edge or curb of the roadway and is not in an intersection; and

~~(b)~~*(ii)* remain stationary until the law enforcement vehicle or authorized emergency vehicle has passed.

(2) An operator of a vehicle who violates this section is subject to the penalties provided in 61-8-715(3)."

Approved May 18, 2023

CHAPTER NO. 568

[HB 477]

AN ACT REVISING LAWS RELATED TO RECOGNITION OF FOREIGN BUSINESS ENTITIES TO INCLUDE ENTITIES FORMED UNDER LAWS OF A FEDERALLY RECOGNIZED INDIAN TRIBE; PROVIDING A FEE FOR RECORDING RECORDS WITH THE SECRETARY OF STATE RELATED TO CERTAIN TRANSACTIONS WITHIN AN INDIAN RESERVATION IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 30-9A-525, 35-14-125, 35-14-140, AND 35-14-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 30-9A-525, MCA, is amended to read:

"**30-9A-525. Fees.** (1) Except as otherwise provided in ~~subsection~~ *subsections* (2) *and (3)*, the fee for each of the following must be set and deposited by the secretary of state as prescribed in 2-15-405:

(a) filing and indexing a record under this part, other than an initial financing statement filed in connection with a public-finance transaction or a manufactured-home transaction;

(b) filing and indexing an initial financing statement of the kind described in 30-9A-502(3); and

(c) responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor.

(2) This section does not require a fee with respect to a record of mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 30-9A-502(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of mortgage apply.

(3) The secretary of state shall charge a fee commensurate with current filing fees to file and index a financing statement or related record for a transaction that involves collateral that is located within the boundaries of an Indian reservation and that is subject to the laws of the governing body of the tribe or tribes of the Indian reservation."

Section 2. Section 35-14-125, MCA, is amended to read:

"**35-14-125. Filing duty -- secretary of state.** (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-14-120, 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 this chapter; 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.

(6) The secretary of state shall file a document that otherwise complies with the requirements of 35-14-120 and this section for any entity that originated under the laws of entity formation of a federally recognized Indian tribe."

Section 3. Section 35-14-140, MCA, is amended to read:

"**35-14-140. General definitions.** For the purposes of this chapter, unless otherwise specified, the following definitions apply:

(1) "Articles of incorporation" means the articles of incorporation described in 35-14-202, 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 this chapter 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 this chapter 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 this chapter.

(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 35-14-141, 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 35-14-123.

(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 35-14-141(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 35-14-141(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*, including a federally recognized Indian tribe*.

(21) "Foreign corporation" or "foreign business corporation" means a corporation incorporated under a law other than the law of this state*, including the laws of a federally recognized Indian tribe,* 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*, including the laws of a federally recognized Indian tribe,* 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 35-14-1503.

(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*, tribal government,* 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 35-14-1102.

(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 this chapter. 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 35-14-723 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 part 15 of this chapter.

(47) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-14-840(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 35-14-1103.

(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, *a tribal government,* 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 this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

(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 35-14-730(1).

(61) "Writing" or "written" means any information in the form of a document."

Section 4. Section 35-14-403, MCA, is amended to read:

"**35-14-403. 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 35-14-401(1)(a) if necessary for the corporate name to comply with 35-14-401(1)(a), if the name is distinguishable in the records of

the secretary of state from the corporate names that are not available under 35-14-401(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, *tribe,* 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 35-14-401(1)(b); or

(b) consent in writing to the use of that name by a domestic corporation subsequently incorporated under this chapter 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 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

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

Approved May 18, 2023

CHAPTER NO. 569

[HB 485]

AN ACT REVISING STRIPPER OIL TAX LAWS; REVISING TAX RATES FOR STRIPPER OIL PRODUCTION; AMENDING SECTIONS 15-36-303 AND 15-36-304, MCA; AMENDING SECTIONS 12 AND 13, CHAPTER 559, LAWS OF 2021; REPEALING SECTIONS 3, 4, 5, 8, 9, 10, AND 14, CHAPTER 559, LAWS OF 2021; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 15-36-303, MCA, is amended to read:

"~~**15-36-303. (Temporary) Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.~~

~~(2) "Department" means the department of revenue provided for in 2-15-1301.~~

~~(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.~~

~~(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.~~

~~(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing~~

~~wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.~~

~~(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.~~

~~(7) "Horizontal drain hole" means that portion of a wellbore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.~~

~~(8) "Horizontally completed well" means:~~

~~(a) a well with one or more horizontal drain holes; or~~

~~(b) any other well classified by the board as a horizontally completed well.~~

~~(9) "Incremental production" means:~~

~~(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:~~

~~(i) commencing the recompletion of a well as a horizontally completed well;~~

~~(ii) expanding the existing enhanced recovery project; or~~

~~(iii) commencing a new enhanced recovery project; or~~

~~(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.~~

~~(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.~~

~~(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993.~~

~~(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.~~

~~(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.~~

~~(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.~~

~~(15) (a) "Post-1999 stripper well" means an oil well drilled on or after January 1, 1999, that produces more than 3 barrels but fewer than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of crude oil reported and received by the producer for Montana oil marketed during a calendar quarter is less than $30. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter.~~

~~(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.~~

~~(c) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current~~

~~calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.~~

~~(16) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.~~

~~(17) (a) "Pre-1999 stripper well" means an oil well that was drilled before January 1, 1999, that produces more than 3 barrels a day but fewer than 10 barrels a day.~~

~~(b) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.~~

~~(18) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.~~

~~(19) "Primary recovery" means the displacement of oil from the earth into the wellbore by means of the natural pressure of the oil reservoir and includes artificial lift.~~

~~(20) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(c).~~

~~(21) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.~~

~~(b) Qualifying production does not include oil production from a horizontally recompleted well.~~

~~(22) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:~~

~~(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.~~

~~(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.~~

~~(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:~~

~~(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing wellbore; or~~

~~(ii) any other method approved by the board as a secondary recovery method.~~

~~(23) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.~~

~~(24) "Stripper well exemption" or "stripper well bonus" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less. Production from this type of well must be determined as provided in subsection (15)(c).~~

~~(25) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:~~

~~(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.~~

~~(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.~~

~~(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:~~

~~(i) miscible fluid displacement;~~

~~(ii) steam drive injection;~~

~~(iii) micellar/emulsion flooding;~~

~~(iv) in situ combustion;~~

~~(v) polymer augmented water flooding;~~

~~(vi) cyclic steam injection;~~

~~(vii) alkaline or caustic flooding;~~

~~(viii) carbon dioxide water flooding;~~

~~(ix) immiscible carbon dioxide displacement; and~~

~~(x) any other method approved by the board as a tertiary recovery method.~~

~~(26) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.~~

~~(27) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells. (Terminates December 31, 2021, 2022, 2023, and 2024, on occurrence of contingency until December 31, 2025--secs. 13, 14, Ch. 559, L. 2021.)~~

~~**15-36-303. (Temporary -- effective on occurrence of contingency) Definitions.** As used in this part, the following definitions apply:~~

~~(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.~~

~~(2) "Department" means the department of revenue provided for in 2-15-1301.~~

~~(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.~~

~~(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.~~

~~(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing~~

~~wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.~~

~~(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.~~

~~(7) "Horizontal drain hole" means that portion of a wellbore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.~~

~~(8) "Horizontally completed well" means:~~

~~(a) a well with one or more horizontal drain holes; or~~

~~(b) any other well classified by the board as a horizontally completed well.~~

~~(9) "Incremental production" means:~~

~~(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:~~

~~(i) commencing the recompletion of a well as a horizontally completed well;~~

~~(ii) expanding the existing enhanced recovery project; or~~

~~(iii) commencing a new enhanced recovery project; or~~

~~(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.~~

~~(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.~~

~~(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993.~~

~~(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.~~

~~(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.~~

~~(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.~~

~~(15) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.~~

~~(16) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.~~

~~(17) "Primary recovery" means the displacement of oil from the earth into the wellbore by means of the natural pressure of the oil reservoir and includes artificial lift.~~

~~(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed~~

~~well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(c).~~

~~(19) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.~~

~~(b) Qualifying production does not include oil production from a horizontally recompleted well.~~

~~(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:~~

~~(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.~~

~~(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.~~

~~(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:~~

~~(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing wellbore; or~~

~~(ii) any other method approved by the board as a secondary recovery method.~~

~~(21) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.~~

~~(22) (a) "Stripper oil" means the oil produced from any well that produces more than 3 barrels but fewer than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of west Texas intermediate crude oil during a calendar quarter is less than $30. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter.~~

~~(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.~~

~~(c) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.~~

~~(23) "Stripper well exemption" or "stripper well bonus" means petroleum and other mineral or crude oil produced by a stripper well that produces 3~~

~~barrels a day or less. Production from this type of well must be determined as provided in subsection (22)(c).~~

~~(24) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:~~

~~(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.~~

~~(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.~~

~~(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:~~

~~(i) miscible fluid displacement;~~

~~(ii) steam drive injection;~~

~~(iii) micellar/emulsion flooding;~~

~~(iv) in situ combustion;~~

~~(v) polymer augmented water flooding;~~

~~(vi) cyclic steam injection;~~

~~(vii) alkaline or caustic flooding;~~

~~(viii) carbon dioxide water flooding;~~

~~(ix) immiscible carbon dioxide displacement; and~~

~~(x) any other method approved by the board as a tertiary recovery method.~~

~~(25) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.~~

~~(26) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells.~~

15-36-303. ~~(Effective January 1, 2026)~~ Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

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

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a wellbore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; or

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) commencing the recompletion of a well as a horizontally completed well;

(ii) expanding the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) (a) "Post-1999 stripper well" means an oil well drilled on or after January 1, 1999, that produces more than 3 barrels but fewer than 15 barrels a day for the calendar year immediately preceding the current year ~~if the average price for a barrel of crude oil reported and received by the producer for Montana oil marketed during a calendar quarter is less than $30. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter~~ *if the average price for a barrel of crude oil reported and received by the producer for Montana oil marketed during a calendar quarter is less than $30. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter.*

~~(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.~~

(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.

~~(c)~~*(c)* Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.

(16) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

(17) (a) "Pre-1999 stripper well" means an oil well that was drilled before January 1, 1999, that produces more than 3 barrels a day but fewer than 10 barrels a day.

(b) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365.

(18) "Pre-1999 well" means an oil or natural gas well that was drilled before January 1, 1999.

(19) "Primary recovery" means the displacement of oil from the earth into the wellbore by means of the natural pressure of the oil reservoir and includes artificial lift.

(20) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(5)(e).

(21) (a) "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

(22) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing wellbore; or

(ii) any other method approved by the board as a secondary recovery method.

(23) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number

of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(24) "Stripper well exemption" or "stripper well bonus" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less. Production from this type of well must be determined as provided in subsection (15)(c).

(25) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; and

(x) any other method approved by the board as a tertiary recovery method.

(26) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(27) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Section 2. Section 15-36-304, MCA, is amended to read:

"~~**15-36-304. (Temporary) 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) (i) pre-1999 stripper wells~~	~~9.2%~~	~~14.8%~~
~~(ii) (A) pre-1999 stripper well exemption production~~	~~0.5%~~	~~14.8%~~
~~(B) pre-1999 stripper well bonus production~~	~~5%~~	~~14.8%~~
~~(c) (i) post-1999 stripper wells:~~		
~~(A) first 1 through 10 barrels a day production~~	~~5.5%~~	~~14.8%~~
~~(B) more than 10 barrels a day production~~	~~9.0%~~	~~14.8%~~
~~(ii) (A) post-1999 stripper well exemption production~~	~~0.5%~~	~~14.8%~~
~~(B) post-1999 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) New or expanded secondary recovery production is taxed as provided in subsection (5)(e)(i) only if the average price reported and received by the producer for Montana oil marketed during a calendar quarter is less than $54. If the price of oil is equal to or greater than $54 a barrel, then 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) Pre-1999 stripper well exemption production is taxed as provided in subsection (5)(b)(ii)(A) only if the average price 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 pre-1999 stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as pre-1999 stripper well bonus production.~~

~~(e) (i) Post-1999 stripper well exemption production is taxed as provided in subsection (5)(c)(ii)(A) only if the average price 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 post-1999 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)(B) only if the average price reported and received by the producer for Montana oil marketed during a calendar quarter is equal to or greater than $54 a barrel.~~

~~(7) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the tax for the oil and gas natural~~

~~resource distribution account. 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) is 0.3%.~~

~~(8) Any interest in production owned by the state or a local government is exempt from taxation under this section. (Terminates December 31, 2021, 2022, 2023, and 2024, on occurrence of contingency until December 31, 2025--secs. 13, 14, Ch. 559, L. 2021.)~~

~~**15-36-304. (Temporary -- effective on occurrence of contingency) 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) 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 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 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 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 subsection (6)(c), 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) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the tax for the oil and gas natural resource distribution account. 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) is 0.3%.~~

~~(8) Any interest in production owned by the state or a local government is exempt from taxation under this section.~~

15-36-304. ~~(Effective January 1, 2026)~~ 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) (i)	pre-1999 stripper wells	~~9.2%~~ *9%*	14.8%
(ii) (A)	pre-1999 stripper well exemption production	0.5%	14.8%
(B)	pre-1999 stripper well bonus production	5%	14.8%
(c) (i)	post-1999 stripper wells:		
(A)	~~first 1~~ *3* through 10 barrels a day production	~~5.5%~~ *5%*	14.8%
(B)	more than 10 barrels a day production	~~9.0%~~ *9%*	14.8%
(ii) (A)	post-1999 stripper well exemption production	0.5%	14.8%
(B)	post-1999 stripper well bonus production	~~6.0%~~ *5%*	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) New or expanded secondary recovery production is taxed as provided in subsection (5)(e)(i) only if the average price reported and received by the producer for Montana oil marketed during a calendar quarter is less than $54. If the price of oil is equal to or greater than $54 a barrel, then 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) Pre-1999 stripper well exemption production is taxed as provided in subsection (5)(b)(ii)(A) only if the average price 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 pre-1999 stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as pre-1999 stripper well bonus production.

(e) (i) Post-1999 stripper well exemption production is taxed as provided in subsection (5)(c)(ii)(A) only if the average price 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 post-1999 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)(B) only if the average price reported and received by the producer for Montana oil marketed during a calendar quarter is equal to or greater than $54 a barrel.

(7) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the tax for the oil and gas natural resource distribution account. 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) is 0.3%.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section."

Section 3. Section 12, Chapter 559, Laws of 2021, is amended to read:

Section 12. Effective dates -- applicability. (1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 and 6] are effective January 1, 2022, and apply to the calendar year beginning after December 31, 2021.

(3) [Sections 2 and 7] are effective January 1, 2023, and apply to the calendar ~~year~~ *years* beginning after December 31, 2022.

~~(4) [Sections 3 and 8] are effective January 1, 2024, and apply to the income calendar year beginning after December 31, 2023.~~

~~(5) [Sections 4 and 9] are effective January 1, 2025, and apply to the calendar year beginning after December 31, 2024.~~

~~(6) [Sections 5 and 10] are effective January 1, 2026, and apply to calendar years beginning after December 31, 2025.~~"

Section 4. Section 13, Chapter 559, Laws of 2021, is amended to read:

"**Section 13. Termination.** ~~(1)~~ [Sections 1 and 6] terminate December 31, 2022.

~~(2) [Sections 2 and 7] terminate December 31, 2023.~~

~~(3) [Sections 3 and 8] terminate December 31, 2024.~~

~~(4) [Sections 4 and 9] terminate December 31, 2025.~~

~~(5) [Section 14] terminates January 1, 2025.~~"

Section 5. Repealer. Sections 3, 4, 5, 8, 9, 10, and 14, Chapter 559, Laws of 2021, are repealed.

Section 6. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1 and 2] are effective January 1, 2024.

Approved May 18, 2023

CHAPTER NO. 570

[HB 486]

AN ACT GENERALLY REVISING LAWS GOVERNING HIGHWAY ENCROACHMENTS; ALLOWING AN INDIVIDUAL TO PETITION FOR THE REMOVAL OF AN ENCROACHMENT; INCREASING THE FINES FOR FAILURE TO REMOVE AN ENCROACHMENT; AND AMENDING SECTIONS 7-14-2134, 7-14-2136, AND 7-14-2137, MCA.

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

Section 1. Section 7-14-2134, MCA, is amended to read:

"**7-14-2134. Removal of highway encroachment.** (1) Except as clarified in 23-2-312 and 23-2-313 and except as provided in subsection ~~(4)~~ *(5)* of this section, if any highway is encroached ~~upon~~ *on* by *a gate,* fence, building, or otherwise, the road supervisor or county surveyor of the district ~~must~~ *shall* give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor shall immediately remove the encroachment.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

(4) An individual may petition the board in writing to have the encroachment removed from a highway that is a county road as defined in 7-14-2101(4)(b)(i), (4)(b)(ii), or (4)(b)(iii).

~~(4)~~*(5)* This section does not apply to a fence for livestock control or property management that is in a county road right-of-way and that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fence and bridge appurtenances are not on the roadway, as defined in 61-1-101. Any fence described in this subsection must comply with 23-2-313."

Section 2. Section 7-14-2136, MCA, is amended to read:

"**7-14-2136. Penalty for failure to remove encroachment promptly.** If the encroachment is not removed immediately or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is ~~liable~~ *subject* to a penalty of ~~$10~~ *$100* for each day the ~~same~~ *encroachment* continues."

Section 3. Section 7-14-2137, MCA, is amended to read:

"**7-14-2137. Legal actions to remove encroachments or recover costs.** (1) (a) If the encroachment is denied, the road supervisor shall commence an action in the proper court to abate the encroachment as a nuisance.

(b) If the road supervisor recovers judgment, the supervisor may have the supervisor's costs and ~~$10~~ *$100* for each day the nuisance remains after notice.

(2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of the person owning or controlling the encroachment.

(b) The supervisor may recover the expense of removal, ~~$10~~ *$100* for each day the encroachment remains after notice, and costs in an action brought for that purpose."

Approved May 18, 2023

CHAPTER NO. 571

[HB 287]

AN ACT REVISING THE MONTANA INDIAN LANGUAGE PRESERVATION PROGRAM; EMPHASIZING THE PERPETUATION OF INDIAN LANGUAGES THROUGH PARTNERSHIPS BETWEEN TRIBAL GOVERNMENTS AND SCHOOL DISTRICTS; MODIFYING THE PROGRAM PARAMETERS AND APPLICATION REQUIREMENTS; EMPHASIZING THE ROLES OF TRIBAL EDUCATION AND CULTURE DEPARTMENTS AND OF INDIAN LANGUAGE AND CULTURAL SPECIALISTS; REVISING REPORTING

REQUIREMENTS; AMENDING SECTION 20-9-537, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-9-537, MCA, is amended to read:

"**20-9-537. Montana Indian language preservation program.** (1) There is a Montana Indian language preservation program. The program is established to support efforts of Montana tribes *and partnering school districts* to preserve and perpetuate Indian languages in the form of spoken, written, sung, or signed language and to ~~assist in the preservation and curricular goals of Indian education for all pursuant to~~ *help meet the state's educational goal of preserving the cultural integrity of American Indians under* Article X, section 1(2), of the Montana constitution ~~and Title 20, chapter 1, part 5~~.

(2) (a) The office of public instruction shall administer the program and, in collaboration with ~~the Montana historical society, the state director of Indian affairs, and~~ each tribal government of a federally recognized Indian tribe in Montana, shall create program guidelines.

(b) The program guidelines must*:*

(i) describe the roles of tribal governments, of tribal education, culture, or language departments or other recognized Indian education resource specialists, and of partnering school districts;

(ii) include definitions of language fluency in sufficient detail to allow measurement of progress toward Indian language preservation; and

(iii) address performance and output standards, distribution of funds, accounting of funds, and use of funds.

(3) (a) The office of public instruction shall equally distribute funds to tribal governments in a manner described in the program guidelines. A tribal government wishing to participate in the program shall submit an application to the office of public instruction that includes at a minimum:

(i) statements of commitment from school districts with which the tribal government will partner through the program;

(ii) a designation of a tribal entity to administer the program. The designation must be to the tribal education department or equivalent or, if the tribe does not have an education department, to another entity such as a tribal culture or language department or equivalent.

(iii) a description of the role of American Indian language and culture specialists in the program, including the number of specialists currently employed by partnering districts;

(iv) a detailed description of proposed curriculum development, instruction, and professional development activities, including the role of American Indian language and culture specialists;

(v) a description of how proposed activities support the tribal government's long-term strategy for Indian language preservation, including:

(A) an estimate of the current number of fluent speakers; and

(B) plans to build multigenerational fluency through:

(I) partnerships with early learning providers; and

(II) adult education offerings; and

(vi) a proposed budget for the expenditure of funds received under the program and any other anticipated funding sources.

(b) Tribal governments and partnering school districts shall report annually to the office of public instruction in a format prescribed in the program guidelines. A tribal government failing to meet the reporting requirements may not receive program funds until reporting requirements have been met.

(c) The office of public instruction shall report to the legislature, to the education interim committee, and to the state-tribal relations committee in accordance with 5-11-210. The report must include:

(i) current program guidelines as required in subsection (2);

(ii) a summary of each participating tribal government's activities under the program; and

(iii) metrics that indicate how well activities funded under this program are promoting language fluency.

~~(c) The performance and output standards must include:~~

~~(i) development of audio and visual recordings;~~

~~(ii) creation of reference materials, which may be in audio, visual, electronic, or written format;~~

~~(iii) creation and publication of curricula, which may include electronic curricula; and~~

~~(iv) administration and maintenance of a long-term language preservation strategic plan.~~

~~(d) The performance and output standards may include:~~

~~(i) language classes;~~

~~(ii) language immersion camps;~~

~~(iii) storytelling;~~

~~(iv) publication of literature; and~~

~~(v) language programs, workshops, seminars, camps, and other presentations in formal or informal settings.~~

~~(3) Any tangible goods produced under this section must be submitted within 1 year of production to the Montana historical society for the benefit of related language preservation efforts and for preservation and archival purposes.~~

~~(4) Tribal governments or their designees receiving program funds may form local program advisory boards. Members of a local program advisory board may include but are not limited to representatives from any of the entities listed in subsection (6).~~

~~(5) (a) Each tribal government or designee shall provide reports on expenditures of grant funds, overall program progress, and other criteria required under the guidelines established pursuant to subsection (2)(a) to the office of public instruction.~~

~~(b) The office of public instruction shall report any findings, comments, or recommendations regarding each local program and the Montana Indian language preservation program to the legislature and to the state-tribal relations committee as provided in 5-11-210.~~

~~(6) Tribal governments and their designees are encouraged to maximize the impact of grant funds by forming partnerships among state and tribal entities and leveraging existing resources for the preservation of Indian languages and the education of all Montanans in a way that honors the cultural integrity of American Indians. Suggested partner entities include but are not limited to:~~

~~(a) the governor's office of Indian affairs;~~

~~(b) school districts located on reservations;~~

~~(c) tribal colleges;~~

~~(d) tribal historic preservation offices;~~

~~(e) tribal language and cultural programs;~~

~~(f) units of the Montana university system;~~

~~(g) the Montana historical society;~~

~~(h) the state-tribal economic development commission;~~

~~(i) Montana public television organizations;~~

~~(j) school districts not located on reservations; and~~

~~(k) the Montana state library.~~

~~(7) State entities that operate film and video studios and equipment shall cooperate with each local tribal preservation program in the production of materials for preservation and archival purposes.~~

~~(8)~~*(4)* Any cultural and intellectual property rights from program efforts belong to the tribe. Use of the cultural and intellectual property may be negotiated between the tribe and other partnering entities.

~~(9)~~*(5)* A tribe may use payments received pursuant to this section as matching funds for federal or private fund sources to accomplish the purposes of this section."

Section 2. Transition. The legislature intends that the office of public instruction collaborate with tribal governments to adopt program guidelines and solicit applications by October 1, 2023, so that funds may be distributed in fiscal year 2024 no later than February 1, 2024.

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 4. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 572

[HB 283]

AN ACT GENERALLY REVISING RENTAL LAWS; PROHIBITING LOCAL GOVERNMENTS WITH SELF-GOVERNMENT POWERS FROM DEVIATING FROM THE LANDLORD AND TENANT ACT OF 1977 AND THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; PROVIDING THAT THE PURPOSE OF THE LANDLORD AND TENANT ACT OF 1977 INCLUDES CREATING AN EXCLUSIVE STATEWIDE REGULATORY STANDARD; PROVIDING THAT THE PURPOSE OF THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT INCLUDES AN EXCLUSIVE STATEWIDE REGULATORY STANDARD; AMENDING SECTIONS 7-1-111, 70-24-102, AND 70-33-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) *(a)* any power that applies to or affects landlords, as defined in 70-24-103 *and 70-33-103*, 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*, and 33.; or* ~~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.~~

(b) any power to deviate from or add to the exclusive application of the provisions of:

(i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;

(ii) residential tenants' security deposit law in Title 70, chapter 25; or

(iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur

radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); or

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1)."

Section 2. Section 70-24-102, MCA, is amended to read:

"**70-24-102. Purposes -- liberal construction to promote.** (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are to:

(a) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; ~~and~~

(b) encourage landlords and tenants to maintain and improve the quality of housing*; and*

(c) create an exclusive regulatory standard throughout the state and its political subdivisions regarding landlord and tenant law."

Section 3. Section 70-33-102, MCA, is amended to read:

"**70-33-102. Purpose -- liberal construction.** (1) This chapter must be liberally construed and applied to promote the underlying purposes and policies of this chapter.

(2) The underlying purposes and policies of this chapter are to:

(a) simplify and clarify the law governing the rental of land to owners of mobile homes and manufactured homes and the rights and obligations of landlords and tenants concerning lot rentals; ~~and~~

(b) encourage landlords and tenants to maintain and improve the quality of housing*; and*

(c) create an exclusive regulatory standard throughout the state and its political subdivisions regarding the rental of land to owners of mobile homes and manufactured homes."

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

Approved May 18, 2023

CHAPTER NO. 573

[HB 270]

AN ACT EXTENDING THE TERMINATION DATE FOR REVISIONS TO THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT AND GENERAL FUND TRANSFER; AMENDING SECTION 3, CHAPTER 137, LAWS OF 2021; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 3, Chapter 137, Laws of 2021, is amended to read:

"**Section 3. Termination.** [This act] terminates June 30, ~~2025~~ *2027*."

Section 2. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 574

[HB 257]

AN ACT REVISING LAWS RELATED TO ADVANCED OPPORTUNITY PROGRAMS; EXPANDING PERSONALIZED LEARNING OPPORTUNITIES FOR STUDENTS TO ACCELERATE THEIR CAREER AND COLLEGE READINESS AND REDUCE OUT-OF-POCKET COSTS FOR FAMILIES; INCREASING THE AMOUNT OF ADVANCED OPPORTUNITY AID AVAILABLE TO SCHOOL DISTRICTS AND INCREASING THE PERCENTAGE OF ADVANCED OPPORTUNITY AID THAT MUST BE ALLOCATED TO REDUCING OUT-OF-POCKET COSTS FOR FAMILIES; REMOVING THE STATUTORY PRESENT LAW BASE CALCULATION FOR THE PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 20-7-1503 AND 20-7-1506, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-7-1503, MCA, is amended to read:

"**20-7-1503. Definitions.** As used in this part, the following definitions apply:

(1) "Advanced opportunity" means any course, exam, or 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~~ *each fiscal year*:

(a) for an elementary district, ~~3%~~ *4.5%* of the district's total quality educator payment defined in 20-9-306 in the prior year;

(b) for a high school district, ~~20%~~ *30%* 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%~~ *18%* 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 20-7-1506(3) who is in grades 6 through 12."

Section 2. Section 20-7-1506, MCA, is amended to read:

"**20-7-1506. 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.~~

(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)~~*(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~~ *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%~~ *75%* 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 *but are not limited to*:

(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;

(v) the costs of participation for qualifying pupils in out-of-school enrichment activities that, in the discretion of the trustees, advance the pupil's opportunity for postsecondary career and educational success; and

~~(v)~~*(vi)* 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 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 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 to:~~

~~(i) 100% of all elementary districts;~~

~~(ii) 100% of all high school districts; and~~

~~(iii) 100% of all K-12 districts.~~"

Section 3. Appropriation. (1) There is appropriated $4 million from the general fund to the office of public instruction for each fiscal year of the biennium beginning July 1, 2023, for distributions of advanced opportunity aid to school districts pursuant to the provisions of Title 20, chapter 7, part 15.

(2) The legislature intends that the appropriation in this section be considered part of the ongoing base for the next legislative session.

Section 4. Coordination instruction. If both House Bill No. 2 and [this act] are passed and approved and if both House Bill No. 2 and [this act] have an appropriation for "State Advanced Opportunity Aid", then the appropriation in House Bill No. 2 is void.

Section 5. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 575

[HB 256]

AN ACT EXPANDING WHEN AUXILIARY OFFICERS MAY CARRY A LESS THAN LETHAL WEAPON; AMENDING SECTION 7-32-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-32-232, MCA, is amended to read:

"**7-32-232. Role of auxiliary officers --** ***when auxiliary officers may carry less than lethal weapons.*** (1) Auxiliary officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer.

(2) *(a)* An auxiliary officer may carry a weapon while on an official search and rescue mission *with prior approval from the sheriff.* ~~with prior approval from the sheriff~~

(b) An auxiliary officer may carry a less than lethal weapon after completing related training prescribed by the auxiliary officer's authorizing law enforcement agency."

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

Approved May 18, 2023

CHAPTER NO. 576

[HB 245]

AN ACT REVISING LAWS RELATED TO THE TRADES EDUCATION AND TRAINING TAX CREDIT; EXPANDING THE LIST OF QUALIFYING TRADES FOR THE TRADES EDUCATION AND TRAINING TAX CREDIT; PROVIDING THE DEPARTMENT OF REVENUE MAY FURTHER EXPAND THE LIST THROUGH ITS EXISTING RULEMAKING AUTHORITY; PROVIDING LEGISLATIVE INTENT; EXTENDING THE TERMINATION DATE 2 YEARS; AMENDING SECTION 15-30-2359, MCA; AMENDING SECTION 7, CHAPTER 248, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 15-30-2359, MCA, is amended to read:

"**15-30-2359. (Temporary) Tax credit for trades education and training.** (1) Subject to the provisions of this section, an employer taxpayer is allowed a credit against the tax imposed by chapter 31 or this chapter for expenses incurred in the provision of certain education and training of employees for a trade profession who work or are anticipated to work in Montana for at least 6 months of the year in which the education or training occurs.

(2) The credit is equal to 50% of the qualified education and training expenses incurred by an employer for the benefit of an employee, not to exceed $2,000 per employee annually. An employer's total credit allowed under subsection (1) on an annual basis may not exceed $25,000.

(3) The credit may not exceed the employer's tax liability and may not be carried forward or carried back.

(4) The credit allowed under this section may not be claimed by an employer:

(a) if the employer has included the qualified education and training expenses upon which the amount of the credit was computed as a deduction in computing the tax imposed by chapter 31 or this chapter; or

(b) for any amount of qualified education and training expenses that are paid for with a grant or other similar program to provide money for education and training of employees.

(5) The credit permitted under this section must be applied to the tax year in which the employer incurs the qualified education and training expenses.

(6) If during any tax year a qualified education and training expense incurred by the employer is recovered by the employer, the employer shall:

(a) include as income the amount deducted in any prior year that is attributable to the qualified education and training expense incurred by the employer to the extent that the deduction reduced the employer's individual income tax or corporate income tax; and

(b) increase the amount of tax due under 15-30-2103 or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken.

(7) The department may adopt rules, prepare forms, and maintain records that are necessary to implement this credit. *The rules may include additional trade professions beyond those listed in subsection (8)(c). The legislature intends that the department implement this credit in a manner that encourages employers to provide education and training in a broad range of trade professions.*

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

(a) "Qualified education and training expenses" means those expenses actually incurred by the employer that are paid to a third party and include but are not limited to expenses for tuition, fees, books, supplies, or equipment required as part of a qualified training method to assist an employee of the employer in developing additional techniques and skills in a trade profession.

(b) "Qualified training method" means education and training provided in any of the following methods:

(i) classroom education or training in which the employee travels to the educator or trainer;

(ii) on-site education or training in which the educator or trainer travels to the business and customizes the education or training to the employer's needs; or

(iii) online education or training that is interactive, in which:

(A) the employee has access to the educator or trainer;

(B) the employee demonstrates or practices what the employee is learning; and

(C) the online education or training has the capability to provide suitable proof of completion.

(c) "Trade profession" means *skilled occupations in a specialized craft requiring advanced training and education but not typically requiring a 4-year postsecondary degree, including but not limited to*:

(i) agricultural equipment operators, inspectors, farm and ranch workers, and laborers;

~~(i)~~*(ii)* boilermakers*, boiler operators, and refractory materials repairers*;

~~(ii)~~*(iii)* brick masons, block masons, ~~and~~ stone masons*, stucco masons, and plasterers*;

~~(iii)~~*(iv)* carpenters*, cabinetmakers, and woodworkers*;

~~(iv)~~*(v)* carpet installers *and flooring finishers and sanders*;

~~(v)~~*(vi)* cement masons and terrazzo workers;

~~(vi)~~*(vii)* construction and building inspectors;

~~(vii)~~*(viii)* construction equipment operators;

~~(viii)~~*(ix)* construction *managers,* laborers, and helpers;

~~(ix)~~*(x)* drywall and ceiling tile installers and tapers*, paperhangers, and insulation workers*;

~~(x)~~*(xi)* electricians *and electric linemen*;

~~(xi)~~*(xii)* elevator installers and repairers;

(xiii) extraction-related professions, including:

(A) explosives workers, ordnance handling experts, and blasters;

(B) surface mining machine operators and earth drillers;

(C) quarry rock splitters;

(D) underground mining machine operators; and

(E) other extraction helpers and workers;

(xiv) fabricators, fitters, and assemblers;

(xv) food manufacturing and processing;

~~(xii)~~*(xvi)* glaziers;

~~(xiii)~~*(xvii)* HVAC workers;

(xviii) information technology related professions, including:

(A) computer information analysts;

(B) database and network administrators;

(C) architects; and

(D) specialists and support professionals;

(xix) locksmiths and safe repairers;

~~(xiv)~~*(xx)* logging and lumbering;

~~(xv)~~*(xxi)* machinists *and tool and die makers*;

~~(xvi)~~*(xxii)* ~~maintenance mechanics and auto mechanics~~ *mechanics, repairers, and service technicians for automobiles, aircraft, commercial vehicles, and small engines*;

(xxiii) medical and dental professionals, including:

(A) dental hygienists;

(B) emergency medical technicians and paramedics;

(C) medical assistants;

(D) pharmacy aides and technicians; and

(E) phlebotomists;

~~(xvii)~~*(xxiv)* millwrights;

~~(xviii)~~*(xxv)* oil and gas workers;

~~(xix)~~*(xxvi)* painters;

~~(xx)~~*(xxvii)* plumbers, pipefitters, *pipelayers, septic tank servicers, sewer pipe cleaners,* and steamfitters;

~~(xxi)~~*(xxviii)* roofers;

~~(xxii)~~*(xxix)* ~~sheet~~ metal *and plastics* workers;

(xxx) solar voltaic installers;

~~(xxiii)~~*(xxxi)* structural iron*, reinforcing iron, rebar,* and steel workers;

~~(xxiv)~~*(xxxii)* telecommunications tower technicians*, equipment installers and repairers, and line installers and repairers*;

(xxxiii) textile, apparel, and furnishings workers;

~~(xxv)~~*(xxxiv)* tile and marble setters;

~~(xxvi)~~*(xxxv)* trucking *and truck drivers*;

~~(xxvii)~~*(xxxvi)* water well drillers;

~~(xxviii)~~*(xxxvii)* welders; and

~~(xxix)~~*(xxxviii)* wind turbine technicians. (Terminates December 31, ~~2026~~ *2028*--sec. 7, Ch. 248, L. 2021.)"

Section 2. Section 7, Chapter 248, Laws of 2021, is amended to read:

"**Section 7. Termination.** [This act] terminates December 31, ~~2026~~ *2028*."

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

Section 4. Retroactive applicability. [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022.

Approved May 18, 2023

CHAPTER NO. 577

[HB 244]

AN ACT REVISING THE ADMINISTRATION OF THE HOUSING MONTANA FUND; REMOVING RESTRICTIONS ON MONEY RECEIVED FROM THE FEDERAL GOVERNMENT IN 2001; REMOVING CERTAIN INCOME REQUIREMENTS FOR LOANS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTION 90-6-133, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 90-6-133, MCA, is amended to read:

"**90-6-133. Housing Montana fund -- administration.** (1) (a) There is a housing Montana fund in the housing authority enterprise fund provided for in 90-6-107. The money in the fund is allocated to the board for the purpose of providing loans to eligible applicants.

(b) Money in the housing Montana fund must be disbursed as loans. Twenty percent of the money in the fund must be disbursed to rural areas based on

population~~, and 50% must be disbursed to assist people living on incomes of not more than 50% of the local median family income~~.

(2) ~~(a) Except as provided in subsection (2)(b), money~~ *Money* deposited in the fund*, including money transferred to the account pursuant to section 2, Chapter 502, Laws of 2001,* must be used for the program authorized in 90-6-134 and may not be used to pay the expenses of any other program or service administered by the board.

~~(b) Money transferred to the account pursuant to section 2, Chapter 502, Laws of 2001, may be used only for the purposes authorized by the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq.~~

(3) The board may determine the rate of interest to be charged for any loan made under the provisions of 90-6-131 through 90-6-136.

(4) The board may accept contributions, gifts, and grants for deposit into the fund. The money must be used in accordance with the provisions of 90-6-134.

(5) The costs incurred by the board in administering the fund may be paid from the fund.

(6) Interest and principal on loans from the fund must be repaid to the fund.

(7) Interest income generated by investment of the principal of the fund is retained in the fund."

Section 2. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 578

[HB 241]

AN ACT PROVIDING THAT THE STATE AND LOCAL GOVERNMENTS CANNOT REQUIRE THAT BUILDINGS BE CONSTRUCTED TO HAVE SOLAR PANELS, BATTERIES, OR ELECTRIC VEHICLE CHARGERS; AND AMENDING SECTIONS 7-1-111 AND 50-60-203, MCA.

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

Section 1. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv); ~~or~~

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1)*; or*

(26) any power to require that buildings be constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles."

Section 2. Section 50-60-203, MCA, is amended to read:

"**50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.

(b) Rules concerning the conservation of energy must conform to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, except as provided in subsection (5), and may adopt rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances.

(5) The department may not include in the state building code*:*

(a) a requirement for the installation of a fire sprinkler system in a single-family dwelling or a residential building that contains no more than two dwelling units*; or*

(b) a requirement that buildings be constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles.

(6) (a) The department shall, by rule, adopt by reference the most recently published edition of the national fire protection association's publication NFPA 99C for the installation of medical gas piping systems. The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of medical gas piping systems.

(b) A state, county, city, or town building code compliance officer shall, as part of any inspection, request proof of a medical gas piping installation endorsement from any person who is required to hold an endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board of plumbers."

Approved May 18, 2023

CHAPTER NO. 579

[HB 220]

AN ACT PROVIDING FOR A SELECT COMMITTEE ON ENERGY RESOURCE PLANNING AND ACQUISITION; PROVIDING FOR MEMBERSHIP AND DUTIES; PROVIDING AN APPROPRIATION; ESTABLISHING REPORTING REQUIREMENTS; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, access to reliable, least-cost power is foundational to the health, safety, and economic well-being of all Montanans; and

WHEREAS, power outages during extreme weather conditions may create devastating economic and human consequences for the citizens of Montana, including the loss of human life; and

WHEREAS, electric consumers in Montana face growing reliability risks and rising energy bills due to overreliance on volatile energy markets and the rapid retirement of on-demand generation throughout Montana and the region; and

WHEREAS, the ability of Montana energy providers to participate in emerging wholesale electricity markets, resource adequacy programs, and other regional coordination efforts is dependent on adequate access to reliable generation resources; and

WHEREAS, the Montana Public Service Commission's oversight of the electricity supply planning and resource acquisition plays a vital role in effectuating the state's energy policy and ensuring access to adequate, reliable power for the citizens of Montana; and

WHEREAS, inefficiency and redundancy in this process impedes deployment of electric supply resources and new technologies needed to secure Montana's energy future.

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

Section 1. Select committee on energy resource planning and acquisition -- membership. (1) There is a select committee on energy resource planning and acquisition.

(2) The committee is composed of 12 members, including:

(a) three members of the house of representatives, two of whom must be appointed by the speaker of the house of representatives and one of whom must be appointed by the minority leader of the house of representatives;

(b) three members of the senate, two of whom must be appointed by the president of the senate and one of whom must be appointed by the minority leader of the senate;

(c) the president of the Montana public service commission or a designee;

(d) the Montana consumer counsel or a designee;

(e) two representatives from a public utility, appointed by the president of the senate;

(f) a representative from an independent power producer or trade organization representing independent power producers selected by the president of the senate; and

(g) one representative from a public interest nonprofit, appointed by the minority leader of the senate.

(3) The president of the senate shall designate one of the members as the presiding officer of the committee. The committee may elect additional officers it considers necessary.

(4) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

(5) The legislative services division shall provide staff assistance to the committee.

(6) State agencies, including the Montana public service commission, the Montana consumer counsel, and the Montana department of environmental quality shall provide information on request.

(7) The committee may contract with other entities as needed to obtain adequate and necessary information and technical expertise.

Section 2. Select committee on energy resource planning and acquisition -- duties. The committee shall:

(1) undertake a comprehensive review of Montana statutes and administrative rules governing electricity supply planning and resource acquisition;

(2) review electricity supply planning and resource acquisition requirements in other states with similar characteristics to Montana;

(3) evaluate the extent to which Montana's planning requirements support access to adequate, reliable power at just and reasonable rates for Montana customers, including but not limited to:

(a) objectives of the planning process and their relation to resource acquisition and approval;

(b) participation by the Montana public service commission and the Montana consumer counsel at each stage of the planning process;

(c) composition and involvement of a technical advisory committee;

(d) public involvement and participation by special interest groups;

(e) risks and alternate scenarios to be analyzed in resource planning;

(f) documentation of assumptions, methodologies, models, and other planning inputs;

(g) the extent to which planning requirements align with state law; and

(h) the role of the Montana public service commission in evaluating or approving resource plans;

(4) analyze whether competitive solicitation requirements and other resource acquisition rules facilitate timely deployment of electricity supply resources and new technologies, including:

(a) at what stage in the supply planning and acquisition process resource approval should take place;

(b) the Montana public service commission's role in overseeing utility competitive solicitations;

(c) requirements for participation of utility resources in competitive solicitations;

(d) the requirements and selection process for a third-party administrator to open, consider, and evaluate bids on behalf of a utility;

(e) the role of an independent monitor to evaluate the competitive solicitation process on behalf of the Montana consumer counsel;

(f) the role of public comment in the scoping process for a competitive solicitation;

(g) exceptions to competitive solicitation requirements and the process for approving opportunity resources; and

(h) the process for approving resources selected through a competitive solicitation or an opportunity resource exemption; and

(5) prepare a final report of its findings and recommendations, and draft legislation if appropriate. The committee shall submit the final report to the energy and telecommunications interim committee for approval prior to submission to the governor and the 69th legislature.

Section 3. Appropriation. There is appropriated $85,000 from the general fund to the legislative services division for the biennium beginning

July 1, 2023, to support the activities of the select committee on energy resource planning and acquisition.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 2023.

Section 5. Termination. [This act] terminates December 31, 2024.

Approved May 18, 2023

CHAPTER NO. 580

[HB 214]

AN ACT GENERALLY REVISING EDUCATION LAWS TO ENHANCE EDUCATIONAL OPPORTUNITIES FOR STUDENTS; REVISING DEFINITIONS TO DISTINGUISH IN-PERSON OFFSITE INSTRUCTIONAL SETTINGS AND REMOTE INSTRUCTION AND REVISING RELATED DEFINITIONS AND STATUTES; REQUIRING SCHOOL DISTRICTS TO PROVIDE REMOTE INSTRUCTION FOR OUT-OF-DISTRICT STUDENTS UNDER CERTAIN CONDITIONS; PROVIDING FRACTIONAL ENROLLMENT FOR ANB CALCULATIONS WHEN A STUDENT IS ENROLLED IN MULTIPLE SCHOOL DISTRICTS; AMENDING SECTIONS 20-1-101, 20-3-363, 20-7-118, 20-7-1601, AND 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 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 *a school of the district* or *an offsite instructional setting or* receiving ~~educational services at an offsite instructional setting~~ *remote instruction* 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 through advanced opportunities, work-based learning partnerships, and other experiential learning opportunities that contribute 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 and~~, in an offsite instructional setting,~~ includes time spent logging on and off ~~an offsite learning platform~~ *when receiving remote instruction*.

(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,~~ *that is an extension of a school of the district, located apart from the school, but within the boundaries of the district,* where a school district provides ~~for~~ *in-person pupil* instruction to a student who is enrolled in the district. *A district shall comply with any rules adopted by the board of public education that specify standards for the provision of educational services at an offsite instructional setting.*

(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 an individual who is admitted by the board of trustees pursuant to 20-5-101 and who is enrolled in a school established and maintained under the laws of the state at public expense. The eligibility of pupils and calculations for average number belonging are governed by 20-9-311.

(17) "Pupil instruction" means the conduct of organized learning opportunities for pupils enrolled in public schools while under the supervision of a teacher. The term includes any directed, distributive, collaborative, or work-based or other experiential learning activity provided, supervised, guided, facilitated, or coordinated under the supervision of a teacher that is conducted purposely to achieve content proficiency and facilitate the acquisition of knowledge, skills, and abilities by pupils enrolled in public schools, and to otherwise fulfill their full educational potential.

(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) "Remote instruction" means pupil instruction that occurs through virtual learning processes incorporating distance and online learning methods that best prepare pupils to meet desired learning outcomes as authorized in 20-7-118.

~~(21)~~*(22)* "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)~~*(23)* "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.

(24) "School of the district" or "school in the district" means an accredited school operated by the district that is located within the boundaries of the district operating the school.

~~(23)~~*(25)* "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)~~*(26)* "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)~~*(27)* "State university" means Montana state university-Bozeman.

~~(26)~~*(28)* "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 in which the language of instruction is English; or

(iii) the opportunity to participate fully in society.

~~(27)~~*(29)* "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(28)~~*(30)* "System" means the Montana university system.

~~(29)~~*(31)* "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)~~*(32)* "Textbook" means a book, digital resource, or manual used as a principal source of study material for a given class or group of students.

~~(31)~~*(33)* "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)~~*(34)* "Trustees" means the governing board of a district.

~~(33)~~*(35)* "University" means the university of Montana-Missoula.

~~(34)~~*(36)* "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 20-3-363, MCA, is amended to read:

"**20-3-363. Multidistrict agreements -- fund transfers.** (1) *(a)* The boards of trustees of any two or more school districts may enter into a multidistrict agreement to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts and to provide for the joint funding and operation and maintenance of all participating districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section.

(b) A multidistrict agreement may include an agreement through which one district provides culturally rooted instruction aligned to a learning environment for English language learners or an Indian language immersion program to pupils of a district participating in the multidistrict agreement. The costs and other terms of service must be reflected in the multidistrict agreement.

(c) An agreement must include provisions for dissolution of the cooperative, including the conditions under which dissolution may occur and the disposition of any remaining funds that had been transferred to an interlocal cooperative fund in support of the cooperative. An agreement must be approved by the boards of trustees of all participating districts and must include a provision specifying terms upon which a district may exit the multidistrict cooperative. The agreement may be for a period of up to 3 years.

(2) All expenditures in support of the multidistrict agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each participating district of the multidistrict cooperative may transfer funds into the interlocal cooperative fund from the district's general fund, budgeted funds other than the retirement fund or debt service fund, or nonbudgeted funds other than the compensated absence liability fund. Transfers to the interlocal cooperative fund from each participating school district's general fund are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund. Transfers from the retirement fund and debt service fund are prohibited. Transfers may not be made with funds restricted by federal law unless the transfer is in compliance with any restrictions or conditions imposed by federal law.

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the budgeted fund from which the transfer was made.

(4) 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 amount of funds transferred.

(5) As used in this title, "multidistrict cooperative" means a public entity created by two or more school districts executing a multidistrict agreement under this section or any school district or other public entity participating in an interlocal cooperative agreement under the provisions of Title 20, chapter 9, part 7, as either a coordinating or a cooperating agency."

Section 3. Section 20-7-118, MCA, is amended to read:

"**20-7-118. ~~Offsite provision of educational services by school district~~ *Remote instruction.*** (1) A school district may provide ~~educational services at an offsite instructional setting~~ *remote instruction*, including the provision of services through electronic means. A district shall comply with any rules adopted by the board of public education that specify standards for ~~the provision of educational services at an offsite instructional setting~~ *remote instruction*. The provision of ~~educational services at an offsite instructional setting~~ *remote instruction* by a district is limited to pupils:

(a) meeting the residency requirements for that district as provided in 1-1-215;

(b) living in the district and eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; *or*

(c) ~~attending school in the district under a mandatory attendance agreement as provided in 20-5-321; or~~

~~(d) attending school in the nearest district offering offsite instruction that agrees to enroll the pupil when the pupil's district of residence does not provide offsite instruction in an equivalent course in which the pupil is enrolled. A course is not equivalent if the course does not provide the same level of advantage on successful completion, including but not limited to dual credit, advanced placement, and career certification. Attendance in these cases is subject to approval of the trustees of the district providing the offsite instruction.~~ *seeking remote instruction in the nearest district when the pupil's district of residence does not provide remote or in-person instruction in an equivalent course. A course is not equivalent if the course does not provide the same level of advantage on successful completion, including but not limited to dual credit, advanced placement, and career certification.*

(2) A school of a district providing remote instruction shall provide remote instruction to an out-of-district pupil under subsection (1)(c) unless, because of class size restrictions, the accreditation of the school would be adversely impacted by providing remote instruction to the pupil.

~~(2)~~*(3)* The superintendent of public instruction shall adopt rules for the administration and enforcement of this section."

Section 4. Section 20-7-1601, MCA, is amended to read:

"**20-7-1601. Forms of personalized learning -- legislative intent.** The legislature finds and declares pursuant to Article X, section 1, of the 1972 Montana constitution that forms of personalized learning authorized under Montana law, including but not limited to work-based learning pursuant to 20-7-1510, proficiency under 20-9-311, determinations of course equivalency by an elected board of trustees under 20-3-324(18), ~~offsite~~ *remote* instruction under 20-7-118, and transformational learning, are appropriate means of fulfilling the people's goal of developing the full educational potential of each person. The provision of and participation in forms of personalized learning under this part and in compliance with accreditation standards of the board of public education are constitutionally compliant and protected. The legislature declares that any public or private regulation that discriminates against a district or pupil participating in forms of personalized learning referenced in this section is inconsistent with constitutional goals and guarantees under Article X of the Montana constitution."

Section 5. Section 20-9-311, MCA, is amended to read:

"**20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging.** (1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on the first Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the student has demonstrated proficiency.

(e) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes. *When a pupil is concurrently enrolled in more than one district, any fractional enrollment under subsection (4)(a) must be attributed first to a pupil's nonresident district.*

(5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) (a) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(b) Except as provided in subsection (7)(c), a pupil who has reached 19 years of age by September 10 of the school year may not be included in the ANB calculations.

(c) A pupil with disabilities who is over 19 years of age and has not yet reached 21 years of age by September 10 of the school year and who is receiving special education services from a school district pursuant to 20-7-411(4)(a) may be included in the ANB calculations if:

(i) the student has not graduated;

(ii) the student is eligible for special education services and is likely to be eligible for adult services for individuals with developmental disabilities due to the significance of the student's disability; and

(iii) the student's individualized education program has identified transition goals that focus on preparation for living and working in the community following high school graduation since age 16 or the student's disability has increased in significance after age 16.

(d) A school district providing special education services pursuant to subsection (7)(c) is encouraged to collaborate with agencies and programs that serve adults with developmental disabilities in meeting the goals of a student's transition plan.

(8) The average number belonging of the regularly enrolled pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district, except that:

(a) the ANB is calculated as a separate budget unit when:

(i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when ~~conditions~~ *geographic barriers* exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, ~~or when any other condition exists~~ that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) when a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) when a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) when a school has been designated as nonaccredited by the board of public education because of failure to meet the board of public education's assurance and performance standards, the regularly enrolled pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of ~~onsite or offsite~~ *in-person or remote* instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school *or an offsite instructional setting* of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using ~~electronic or offsite~~ *remote* delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs~~, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district~~. The pupil ~~shall~~:

(i) *must* meet the residency requirements for that district as provided in 1-1-215;

(ii) *shall* live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; ~~or~~

(iii) ~~attend school in the district~~ *must be enrolled in the educational program or course* under a mandatory attendance agreement as provided in 20-5-321*; or*

(iv) must be receiving remote instruction under 20-7-118(1)(c).

(h) a resident of the district attending the Montana youth challenge program or a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment.

(13) (a) A district may, for ANB purposes, include in the October and February enrollment counts an individual who is otherwise eligible under this title and who during the prior school year:

(i) resided in the district;

(ii) was not enrolled in the district or was not enrolled full time; and

(iii) completed an extracurricular activity with a duration of at least 6 weeks.

(b) (i) Except as provided in subsection (13)(b)(ii), each completed extracurricular activity under subsection (13)(a) may be counted as one-sixteenth enrollment for the individual, but under this subsection (13) the individual may not be counted as more than one full-time enrollment for ANB purposes.

(ii) Each completed extracurricular activity lasting longer than 18 weeks may be counted as one-eighth enrollment.

(c) For the purposes of this section, "extracurricular activity" means:

(i) a sport or activity sanctioned by an organization having jurisdiction over interscholastic activities, contests, and tournaments;

(ii) an approved career and technical student organization, pursuant to 20-7-306; or

(iii) a school theater production.

(14) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (14)(a) and then combined.

(15) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (15)(a) by three."

Section 6. Effective date. [This act] is effective July 1, 2023.

Section 7. Applicability. [This act] applies to school years and years of attendance beginning on or after July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 581

[HB 198]

AN ACT PROVIDING FOR MUNICIPAL AUTHORITY TO ENACT CERTAIN ORDINANCES REGARDING HIGHWAY ENCROACHMENTS; DEFINING IMPERMANENT ENCROACHMENT; AND AMENDING SECTIONS 60-6-101, 60-6-103, AND 60-6-104, MCA.

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

Section 1. Limitation of authority within incorporated municipalities -- exclusion outside incorporated municipalities -- inclusion due to lack of local ordinances. (1) (a) Municipalities incorporated under Title 7, chapter 2, part 41, have the authority to enact ordinances in accordance with state and federal laws governing the placement of impermanent encroachments on sidewalks of a commission-designated highway system or state highway right-of-way without the necessity of permitting by the department of transportation for individual encroachments as described in 60-6-101.

(b) This provision is limited to sidewalks as defined in 61-8-102.

(2) (a) This provision specifically excludes all commission-designated highway systems and state highway rights-of-way outside of incorporated municipality boundaries.

(b) A sidewalk encroachment requiring or resulting in a permanent attachment to or a modification of a commission-designated highway system or state highway right-of-way must abide by the requirements of 60-6-101 through 60-6-105.

(3) (a) An incorporated municipality that has not enacted an ordinance regulating the placement of an impermanent encroachment on a sidewalk shall default to the permitting process as described in 60-6-101 until it enacts a regulating ordinance.

(b) After enacting a regulating ordinance:

(i) the municipality shall indemnify the state, including costs and fees, for all claims for damages caused by the municipality's enactment of an ordinance, approval of the impermanent encroachment on a sidewalk, and placement of the impermanent encroachment on a sidewalk; and

(ii) sections 60-6-101 through 60-6-105 do not apply to the impermanent encroachment on a sidewalk except as provided by this section.

(4) The department of transportation shall communicate identified violations of state or federal law, including the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended, to the incorporated municipalities for enforcement within their boundaries. This communication must include references to the state or federal law that was violated. If an incorporated municipality has not acted to address the violation within 7 days,

the department of transportation is authorized to proceed with removal of the violation as described in 60-6-101 through 60-6-105.

(5) "Impermanent encroachment" means:

(a) an object that is not permanently affixed to the sidewalk of a commission-designated highway system or state highway right-of-way or that does not require the modification of the sidewalk of a commission-designated highway system or state highway right-of-way; or

(b) an occupied encroachment above grade level.

Section 2. Section 60-6-101, MCA, is amended to read:

"**60-6-101. Highway encroachments -- permit -- immediate removal.** (1) If a commission-designated highway system or state highway is encroached on by an obstruction, device, or object placed within the right-of-way limits, including a fence, building, structure, sign, marker, mailbox, newspaper delivery box, or driveway approach, or is obstructed by physical occupancy of the right-of-way by a person, persons, or group of persons, the department of transportation:

(a) for a mailbox or newspaper delivery box, may issue an encroachment permit pursuant to subsection (3); and

(b) (i) for all other encroachments, may issue an encroachment permit pursuant to subsection (2); or

(ii) may give notice in writing to the person erecting or maintaining the encroachment requiring that it be removed.

(2) (a) ~~A~~ *Except as provided in [section 1], a* highway right-of-way encroachment may not be constructed, maintained, or occupied on a commission-designated highway system or state highway without a permit. An application for a permit must be made to the department on a form provided by the department. The department shall require reasonable information to be furnished, including site plan drawings or specifications for an object encroachment.

(b) The department shall adopt rules pertaining to the issuance of encroachment permits and the removal of encroachments.

(3) (a) The department shall adopt rules pertaining to the accommodation of mailboxes and newspaper delivery boxes on public highway rights-of-way. The rules must ensure that the location and construction of mailboxes and newspaper delivery boxes conform to the rules and regulations of the U.S. postal service.

(b) The department may issue an encroachment permit for a completed permit application for a mailbox or newspaper delivery box.

(c) The department may not charge a fee for an encroachment permit for a mailbox or newspaper delivery box.

(4) If an encroachment obstructs or prevents the use of the highway for vehicles, the department may immediately remove the encroachment without the notice required by 60-6-102.

(5) Utility facilities lawfully occupying a highway right-of-way on October 1, 2019, or under an occupancy or encroachment permit issued by the department pursuant to 60-4-402(1)(c) are not encroachments within the meaning of this part."

Section 3. Section 60-6-103, MCA, is amended to read:

"**60-6-103. Encroachment not permanently affixed -- time limit for removal -- penalty.** (1) ~~If~~ *Except as provided in [section 1], if* an unpermitted encroachment is not permanently affixed to the land and is not removed from the right-of-way by the person who erected or maintains the encroachment within 2 days after receipt of the notice provided for in 60-6-102, the department may begin action under 60-6-104 for its removal at the expense of the person

who causes, owns, or controls it. The department may recover the expense of removal and costs in an action brought for that purpose.

(2) If an encroachment presents an imminent danger to the public, the department may immediately remove the encroachment without the notice required by 60-6-102."

Section 4. Section 60-6-104, MCA, is amended to read:

"**60-6-104. Unpermitted encroachment -- department action.** ~~If~~ *Except as provided in [section 1], if* an encroachment permit provided for in 60-6-101 has not been granted and the person erecting or maintaining the encroachment fails to remove it after receiving notice pursuant to 60-6-102, the department shall commence appropriate legal action to have the encroachment removed. If the department recovers a judgment, it shall have its costs. If the encroachment is not removed within 5 days after entry of judgment, the department may remove it at the expense of the person who causes, owns, or controls it."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 6, part 1, and the provisions of Title 60, chapter 6, part 1, apply to [section 1].

Approved May 18, 2023

CHAPTER NO. 582

[HB 196]

AN ACT REVISING THE PROCEDURE FOR THE COUNTING OF VOTES; AMENDING SECTION 13-15-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-15-101, MCA, is amended to read:

"**13-15-101. Votes to be publicly counted -- return forms.** (1) *(a)* Any official vote count must be open to public observation*, including but not limited to resolution and counting areas*.

(b) Counties that perform tabulation using a vote-counting machine on the day prior to the election shall continue until all available ballots that can be legally counted have been tabulated or 5 p.m., whichever is earlier. The results of the tabulation may not be made publicly available until after the close of polls on election day and only after all voters have completed voting on election day in the county.

(c) (i) On election day, tabulation must begin and continue without adjournment until all available ballots that can be legally counted have been tabulated except pending unresolved resolution board ballots, provisional ballots, or military overseas ballots.

(ii) Immediately once all voters in a county have completed voting on election day, but no earlier than 8 p.m., the election administrator in the county shall provide the initial results to the public and continue to provide updated results at least once every 3 hours until completion. However, if the election is for at least one statewide race or statewide ballot issue, the election administrator's public reporting of any results must first be provided to the secretary of state's election night reporting system.

(iii) All documents must be secured, with no person allowed access outside regular business hours.

(d) (i) A county that performs tabulation pursuant to 13-15-107, 13-21-206, or 13-21-226 shall continue without adjournment until all available ballots that can be legally counted have been tabulated.

(ii) Once tabulation has been completed, the results must be immediately publicly declared However, if the election is for at least one statewide race or statewide ballot issue, the election administrator's public reporting of the results must first be provided to the secretary of state's election night reporting system.

(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.

(4) The secretary of state may adopt rules providing for notifications to the secretary of state concerning vote total updates or associated delays during the counting of votes, including the prioritization of reporting results through the state's election night reporting system, but the rules may not require more frequent reporting of votes counted than otherwise provided in this section."

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

Approved May 18, 2023

CHAPTER NO. 583

[HB 189]

AN ACT REVISING THE PROPERTY TAX ASSISTANCE PROGRAM; INCREASING THE MARKET VALUE TO WHICH THE PROGRAM APPLIES; AMENDING SECTIONS 15-6-301, 15-6-305, AND 15-6-311, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-6-301, MCA, is amended to read:

"**15-6-301. Definitions.** As used in this part, the following definitions apply:

(1) "Annual verification" means the use of a process to:

(a) verify an applicant's income;

(b) approve, renew, or deny benefits for the current year based upon the applicant's eligibility; and

(c) terminate participation based upon death or loss of status as a qualified veteran or veteran's spouse.

(2) "PCE" means the implicit price deflator (price index) for personal consumption expenditures as published in the national income and product accounts by the bureau of economic analysis of the U.S. department of commerce.

(3) "PCE inflation factor" for a tax year means the PCE price index value for the first quarter of the prior tax year before the tax year divided by the PCE price index value for the first quarter of ~~2015~~ *2023*.

(4) (a) "Primary residence" is, subject to the provisions of subsection (4)(b), a dwelling:

(i) in which a taxpayer can demonstrate the taxpayer lived for at least 7 months of the year for which benefits are claimed;

(ii) that is the only residence for which property tax assistance is claimed; and

(iii) determined using the indicators provided for in the rules authorized by 15-6-302(2).

(b) A primary residence may include more than one dwelling when the taxpayer's combined residence in the dwellings is at least 7 months of the tax year.

(5) "Qualified veteran" means a veteran:

(a) who was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services; and

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs.

(6) "Qualifying income" means:

(a) the federal adjusted gross income excluding capital and income losses of an applicant and the applicant's spouse as calculated on the Montana income tax return for the prior year;

(b) for assistance under 15-6-311, the federal adjusted gross income excluding capital and income losses of an applicant as calculated on the Montana income tax return for the prior tax year; or

(c) for an applicant who is not required to file a Montana income tax return, the income determined using available income information.

(7) "Qualifying property" means a primary residence that a qualified applicant owned and occupied for at least 7 months during the tax year.

(8) "Residential real property" means the land and improvements of a taxpayer's primary residence."

Section 2. Section 15-6-305, MCA, is amended to read:

"**15-6-305. Property tax assistance program -- fixed or limited income -- *inflation adjustments.*** (1) There is a property tax assistance program that provides graduated levels of tax assistance for the purpose of assisting citizens with limited or fixed incomes. To be eligible for the program, applicants must meet the requirements of 15-6-302.

(2) The first ~~$200,000~~ *$350,000* in ~~appraisal~~ *market* value of residential real property qualifying for the property tax assistance program is taxed at the rates established by 15-6-134 multiplied by a percentage figure based on the applicant's qualifying income determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
~~$0 - $8,413~~	~~$0 - $11,217~~	~~20%~~
~~$8,414 - $12,900~~	~~$11,218 - $19,630~~	~~50%~~
~~$12,901 - $21,032~~	~~$19,631 - $28,043~~	~~70%~~
$0 - $13,590	*$0 - $18,310*	*20%*
$13,591 - $18,580	*$18,311 - $27,667*	*50%*
$18,581 - $27,621	*$27,668 - $37,019*	*70%*

(3) The market value in subsection (2) must be adjusted after each reappraisal cycle provided for in 15-7-111 using an inflation index based on the change in

appraised value of a median value of residential real property participating in the property tax assistance program.

~~(3)~~*(4)* The qualifying income levels contained in subsection (2) must be adjusted annually using the PCE inflation factor defined in 15-6-301, rounded to the nearest whole dollar amount. If the adjustment results in a decrease in qualifying income levels from the previous year, the qualifying income levels must remain the same for that year."

Section 3. Section 15-6-311, MCA, is amended to read:

"**15-6-311. Disabled veteran program.** (1) The residential real property of a qualified veteran or a qualified veteran's spouse is eligible to receive a tax rate reduction as provided in 15-6-302 and this section.

(2) Property qualifying under subsection (1) and owned by a qualified veteran is taxed at the rate provided in 15-6-134 multiplied by a percentage figure based on the applicant's qualifying income determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
~~$0 - $37,404~~	~~$0 - $44,885~~	~~0%~~
~~$37,405 - $41,145~~	~~$44,886 - $48,626~~	~~20%~~
~~$41,146 - $44,885~~	~~$48,627 - $52,366~~	~~30%~~
~~$44,886 - $48,626~~	~~$52,367 - $56,107~~	~~50%~~
$0 - $45,803	*$0 - $54,963*	*0%*
$45,804 - $50,384	*$54,964 - $59,544*	*20%*
$50,385 - $54,963	*$59,545 - $64,124*	*30%*
$54,964 - $59,554	*$64,125 - $68,705*	*50%*

(3) For a surviving spouse who owns property qualifying under subsection (4), the property is taxed at the rate established by 15-6-134 multiplied by a percentage figure based on the spouse's qualifying income determined from the following table:

Income Surviving Spouse	Percentage Multiplier
~~$0 - $31,170~~	~~0%~~
~~$31,171 - $34,911~~	~~20%~~
~~$34,912 - $38,651~~	~~30%~~
~~$38,652 - $42,392~~	~~50%~~
$0 - $38,169	*0%*
$38,170 - $42,750	*20%*
$42,751 - $47,330	*30%*
$47,331 - $51,911	*50%*

(4) The property tax exemption under this section remains in effect as long as the qualifying income requirements are met and the property is the primary

residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

(a) is the owner and occupant of the house;

(b) is unmarried; and

(c) has obtained from the U.S. department of veterans affairs a letter indicating that the veteran was rated 100% disabled or was paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

(5) The qualifying income levels contained in subsections (2) and (3) must be adjusted annually by using the PCE inflation factor defined in 15-6-301, rounded to the nearest whole dollar amount. If the adjustment results in a decrease in qualifying income levels from the previous year, the qualifying income levels must remain the same for that year."

Section 4. Applicability. [This act] applies to property tax years beginning after December 31, 2023.

Approved May 18, 2023

CHAPTER NO. 584

[HB 174]

AN ACT REQUIRING THAT CERTAIN COSTS PAID BY AN ARRESTING AGENCY OR THE DEPARTMENT OF CORRECTIONS TO THE OPERATOR OF A DETENTION CENTER BE BASED ON ACTUAL COSTS; PROVIDING DEFINITIONS; AMENDING SECTION 7-32-2242, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 1. Section 7-32-2242, MCA, is amended to read:

"**7-32-2242. Use of detention center -- payment of costs.** (1) Local government, state, and federal law enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for the detention center.

(2) (a) ~~If~~ *Except as provided in 7-32-2245, if* a person is confined in a detention center by an arresting agency not responsible for the operation of the detention center, the *actual* costs of holding the person in confinement must be paid by the arresting agency ~~at a rate that is agreed upon by the arresting agency and the detention center and that covers the reasonable costs of confinement, excluding capital construction costs, except as provided in 7-32-2245 or subsection (2)(b) of this section~~ *unless otherwise agreed to by the arresting agency and the operator of the detention center*.

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county, except as provided in 7-32-2245. If the department of corrections is the arresting agency and the inmate is a probation violator, the costs must be paid by the county in which the district court that retains jurisdiction over the inmate is located, except as provided in 7-32-2245.

(c) The department of corrections is responsible to pay actual costs for defendants following the pronouncement of sentence pursuant to 46-19-101.

(d) Payments must be made to the government unit responsible for the detention center or to the administrator operating a private detention center under an agreement provided for in 7-32-2201, ~~upon~~ *on* presentation of a claim to the arresting agency.

(e) For purposes of this section, "actual costs" of a detention center is defined as the greater of:

(i) the daily per inmate provider rate for crossroads correctional facility less 10%; or:

(ii) $82.

(3) If a person is a fugitive from justice from an out-of-state jurisdiction, the costs, including medical expenses, of holding the person in a detention center pending extradition must be paid by the out-of-state jurisdiction."

Section 2. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 585

[HB 164]

AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO CATERING ENDORSEMENTS; ALLOWING BEER AND WINE LICENSEES TO OBTAIN A CATERING ENDORSEMENT WITHOUT HAVING TO BE ENGAGED PRIMARILY IN THE BUSINESS OF PROVIDING MEALS; PROVIDING THAT CONCESSIONAIRES MAY NOT SPONSOR CATERED EVENTS; AMENDING SECTIONS 16-1-106, 16-4-111, AND 16-4-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 0.5% of alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 0.5% of alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

(9) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

(11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-312.

(12) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(13) "Growler" means any fillable, sealable container complying with federal law.

(14) (a) "Guest ranch" means a business or organization that provides guests with overnight lodging, dining, and onsite outdoor recreational activities typical of western ranching for the purposes of vacation or recreation. Recreational activities offered by a guest ranch may include but are not limited to horseback riding, wagon or sleigh rides, shooting, and working with livestock. The property of a guest ranch must be composed of at least 50 contiguous acres. The property must be located entirely outside the license quota area of an incorporated city or an incorporated town as determined under 16-4-105(1) or 16-4-201. The premises of a guest ranch may include restaurants, sporting and recreational equipment shops, event venues, arenas, and other facilities that may be used by other persons in addition to the overnight guests.

(b) The term does not include premises used as rehabilitation centers, group homes, clinics, nursing homes, church or other religious campgrounds, or other similar uses.

~~(14)~~*(15)* "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

~~(15)~~*(16)* "Immediate family" means a spouse, dependent children, or dependent parents.

~~(16)~~*(17)* "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(17)~~*(18)* "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

~~(18)~~*(19)* "Malt beverage" means:

(a) an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption; or

(b) an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses that has not undergone distillation.

~~(19)~~*(20)* (a) "Original package" means the sealed container in which a manufacturer packages its product for retail sale.

(b) The term includes but is not limited to:

(i) bottles;

(ii) cans; and

(iii) kegs.

~~(20)~~*(21)* "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(21)~~*(22)* "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

~~(22)~~*(23)* "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and sealed with a lid, for consumption at a place other than the licensee's premises.

~~(23)~~*(24)* "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(24)~~*(25)* "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(25)~~*(26)* "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(26)~~*(27)* "Rules" means rules adopted by the department or the department of justice pursuant to this code.

~~(27)~~*(28)* "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

~~(28)~~*(29)* "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

~~(29)~~*(30)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(30)~~*(31)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(31)~~*(32)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(32)~~*(33)* "Table wine" means wine that contains not more than 16% of alcohol by volume and includes cider.

~~(33)~~*(34)* "Table wine distributor" means a person importing into or purchasing in Montana table wine or sacramental wine for sale or resale to retailers licensed in Montana.

~~(34)~~*(35)* "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(35)~~*(36)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-4-111, MCA, is amended to read:

"**16-4-111. Catering endorsement for beer and wine licensees.** (1) (a) A person who is ~~engaged primarily in the business of providing meals with table service and who is~~ licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, ~~upon~~ *on* the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event ~~upon~~ *on* premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, ~~upon~~ *on* the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event ~~upon~~ *on* premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(c) A person licensed under 16-4-105 to sell beer and wine at retail for on-premises consumption at a guest ranch may, on the approval of the department, be granted a guest ranch catering endorsement to the license to allow the catering and sale of beer and wine to guests of the guest ranch for events at locations on the guest ranch other than the licensed premises. These events do not need to be special events. The beer and wine must be consumed where the event is held.

(2) ~~A written~~ *An* application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) ~~A~~ *With the exception of a guest ranch catering endorsement, a* licensee who holds a catering endorsement may not cater an event in which the licensee *or the concessionaire of the licensee* is the sponsor. The catered event must be within 100 miles of the licensee's ~~regular place of business~~ *licensed premises measured in a straight line from the nearest entrance of the licensed premises to the nearest boundary of the catered event.*

(4) Except as provided in subsection (8), the storage of alcoholic beverages may occur on the premises of the catered event 1 day prior to the catered event until 1 day following the conclusion of the catered event if the alcoholic beverages are in a secured location that prevents access by anyone other than the licensee or the licensee's employees.

~~(4)~~*(5)* ~~The~~ *With the exception of a guest ranch catering endorsement, the* licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A *local government may charge a* fee of $35 ~~must accompany the notice~~.

~~(5)~~*(6)* The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

~~(6)~~*(7)* The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

~~(7) (a) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.~~

~~(b) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a sporting event conducted on the premises of a Montana university as provided in 16-4-112 authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.~~

(8) A licensee may sell and serve beer and wine in the grandstands and bleacher area of the premises, as well as from a booth, stand, or other fixed placed on the premises when the catered event is held on the premises of a county fairground, public sports arena, or Montana university as defined in 16-4-112. If the licensee has a written agreement with the state of Montana, a political subdivision of the state, or a Montana university to sell and serve beer and wine for multiple catered events at the premises, the licensee may store beer and wine to be used for the catered events on the premises of the fairground, public sports arena, or Montana university for the length of the written agreement if the beer and wine can be stored in a secure location that prevents access by anyone other than the licensee or the licensee's employees. Each catered event held at the premises is subject to the requirement in subsection (5) and must be individually reported to the department.

~~(8)~~*(9)* A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana university as provided in 16-4-112, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."

Section 3. Section 16-4-204, MCA, is amended to read:

"**16-4-204. Transfer -- catering endorsement *for all-beverages licensees* -- competitive bidding -- rulemaking.** (1) (a) Except as provided in subsection (3), a license may be transferred to a new owner and to a location outside the quota area where the license is currently located only when the following criteria are met:

(i) the total number of all-beverages licenses in the current quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within 5 miles of its corporate limits, by more than 43%; ~~or~~ *and*

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by a transfer.

(b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a competitive bidding process is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(2) When the department determines that a license may be transferred from one quota area to another under subsection (1), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to purchase and transfer a license.

(3) A license within an incorporated quota area may be transferred to a new owner and to a new unincorporated location within the same county on application to and with consent of the department when the total number of all-beverages licenses in the current quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(4) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(5) (a) Any all-beverages licensee is, ~~upon~~ *on* the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event on premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) ~~A written~~ *An* application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages license issued under 16-4-201 to a guest ranch is, on the approval and in the discretion of the department, entitled to a guest ranch catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending an event on the guest ranch other than at the licensed premises. These events do not need to be special events. The alcoholic beverages must be consumed where the event is held.

~~(c)~~*(d)* ~~An~~ *With the exception of a guest ranch catering endorsement, an* all-beverages licensee who holds ~~an endorsement granted under this subsection (5)~~ *a catering endorsement* may not cater an event in which the licensee *or the concessionaire of the licensee* is the sponsor. The catered event must be within 100 miles of the licensee's ~~regular place of business~~ *licensed premises measured in a straight line from the nearest entrance of the licensed premises to the nearest boundary of the catered event.*

(d) Except as provided in subsection (5)(h), the storage of alcoholic beverages may occur on the premises of the catered event 1 day prior to the catered event until 1 day following the conclusion of the catered event if the alcoholic beverages are in a secured location that prevents access by anyone other than the licensee or the licensee's employees.

~~(d)~~*(e)* ~~The~~ *With the exception of a guest ranch catering endorsement, the* licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A *local government may charge a* fee of $35 ~~must accompany the notice~~.

~~(e)~~*(f)* The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

~~(f)~~*(g)* The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

~~(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.~~

~~(h) A catering endorsement issued for the purpose of selling and serving liquor or beer and wine at a sporting event conducted on the premises of a Montana university as provided in 16-4-112 authorizes the licensee to sell and serve liquor or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.~~

(h) A licensee may sell and serve liquor, beer, and wine in the grandstands and bleacher area of the premises, as well as from a booth, stand, or other fixed placed on the premises when the catered event is held on the premises of a county fairground, public sports arena, or Montana university as defined in 16-4-112. If the licensee has a written agreement with the state of Montana, a political subdivision of the state, or a Montana university to sell and serve liquor, beer, and wine for multiple catered events at the premises, the licensee may store liquor, beer, and wine to be used for the catered events on the premises of the fairground, public sports arena, or Montana university for the length of the written agreement if the liquor, beer, and wine can be stored in a secure location that prevents access by anyone other than the licensee or the licensee's employees. Each catered event held at the premises is subject to the requirement in subsection (5)(e) and must be individually reported to the department.

(i) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana university as provided in 16-4-112, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.

(6) The department may adopt rules to implement this section."

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

Approved May 18, 2023

CHAPTER NO. 586

[HB 147]

AN ACT CREATING AN ENHANCED MEDICAID REIMBURSEMENT RATE FOR PROVIDERS OF CERTAIN CHILDREN'S MENTAL HEALTH SERVICES TO INCREASE ACCESS TO IN-STATE CARE FOR HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; CREATING A REPORTING REQUIREMENT; PROVIDING A DEFINITION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Enhanced rate to increase access to in-state mental health services for high-risk children with multiagency service needs -- reporting requirement -- rulemaking. (1) In an effort to avoid the placement of high-risk children with multiservice agency needs in out-of-state residential treatment facilities, the department shall pay an enhanced medicaid reimbursement rate when an in-state provider of psychiatric residential treatment facility services provides treatment to a child who meets criteria established by the department. The criteria must be related to:

(a) the age of the child; or

(b) the acuity of the child's treatment needs.

(2) (a) For the fiscal year beginning July 1, 2023, the reimbursement rate for psychiatric residential treatment facility services provided to a child meeting the age or acuity criteria established pursuant to this section is the higher of:

(i) 133% of the rate in effect on July 1, 2022, for an in-state provider of the service; or

(ii) the rate adopted by the department for an in-state provider of the service for fiscal year 2024.

(b) The rate provided for in subsection (2)(a) must be increased in each subsequent fiscal year by the provider rate increase approved by the legislature for children's mental health services for that fiscal year.

(3) The department shall annually determine, in consultation with providers of psychiatric residential treatment facility services, the criteria a child must meet for treatment to qualify for the enhanced reimbursement rate. The department shall notify providers of the determination no later than:

(a) May 15 for fiscal year 2024; and

(b) March 30 for subsequent fiscal years.

(4) The department shall adopt rules regarding the manner in which it will make the enhanced payments, including the frequency with which the payments will be made.

(5) (a) A provider that receives an enhanced reimbursement rate under this section shall:

(i) provide to the department a summary of the diagnoses, behaviors, and ages for the medicaid-eligible children receiving services from the provider in fiscal year 2023; and

(ii) report annually to the department on the diagnoses, behaviors, and ages of the medicaid-eligible children receiving services from the provider during the fiscal year in which the provider receives an enhanced reimbursement rate.

(b) The department shall report the information required under subsection (5)(a) to the legislature in accordance with 5-11-210.

(6) For the purposes of this section, the term "high-risk child with multiagency service needs" has the meaning provided in 52-2-302.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 1].

Section 3. Effective date -- contingency. (1) [This act] is effective on the later of July 1, 2023, or the date that the department of public health and human services certifies to the code commissioner that the centers for medicare and medicaid services has approved a state plan amendment for the enhanced reimbursement rate.

(2) The director of the department of public health and human services shall submit certification within 15 days of receiving notice of approval of the state plan amendment.

Section 4. Termination. [Section 1] terminates June 30, 2027.

Approved May 18, 2023

CHAPTER NO. 587

[HB 140]

AN ACT ESTABLISHING THE MODERNIZATION AND RISK ANALYSIS COMMITTEE; ESTABLISHING DUTIES AND FUNCTIONS OF THE COMMITTEE; PROVIDING FOR COMPENSATION FOR LEGISLATIVE AND PUBLIC COMMITTEE MEMBERS; PROVIDING FOR ADDRESSING VACANCIES ON THE COMMITTEE; PROVIDING THAT THE LEGISLATIVE FISCAL DIVISION AND THE LEGISLATIVE SERVICES DIVISION WILL STAFF THE COMMITTEE; RENAMING THE LEGISLATIVE FINANCE ACT TO THE LEGISLATIVE FINANCE AND DATA ANALYTICS ACT; AMENDING SECTIONS 5-5-211, 5-12-101, 5-12-301, AND 5-12-302, MCA; REPEALING SECTION 3, CHAPTER 508, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Modernization and risk analysis committee. (1) There is a modernization and risk analysis committee. The committee shall study the long-term future budget and revenue needs of the state with changing economics and demographics.

(2) The modernization and risk analysis committee is a bipartisan committee consisting of the following:

(a) six members of the legislative finance committee, with three members appointed by the presiding officer and three members appointed by the vice presiding officer of the legislative finance committee; and

(b) four members who are not officials or employees in the executive or legislative branches with two appointed by the presiding officer and two appointed by the vice presiding officer of the modernization and risk analysis committee; and

(c) an interim committee chairperson and vice chairperson of opposite parties as temporary voting members of the committee. The presiding officer of the modernization and risk analysis committee shall invite the two members based on the relevance at least one of the topics of the upcoming meeting to the subject matter under the jurisdiction of a specific interim committee. If the chairperson or vice chairperson of the interim committee is unable to attend, the chairperson or vice chairperson may designate a member of the interim committee. The interim committee chairperson and vice chairperson must be invited at least 30 days prior to the meeting date.

(3) The legislative fiscal division shall provide administrative staff support and analysis to the modernization and risk analysis committee. The legislative services division may provide research and legal support at the request of the committee.

(4) The modernization and risk analysis committee shall:

(a) use available data and analytical resources to study the past, present, and future costs and revenues of all state and local government entities and other policy areas that affect the future well-being of the citizens of the state of Montana, including but not limited to:

(i) health care;

(ii) human services;

(iii) elementary and secondary education;

(iv) higher education;

(v) pensions;

(vi) public safety and corrections;

(vii) infrastructure and public works;

(viii) programs historically funded by revenue generated from natural resource taxes;

(ix) information technology systems of the state and local government.

(b) issue and, at the committee's discretion, accept invitations to work with interim committees on various data and analytic research projects;

(c) provide direction to the legislative fiscal division on the direction and priorities of data work of the division;

(d) create data sets and models for future analysis by the legislature; and

(e) take affirmative measures to use and disseminate data generated by and for the committee for educating, training, and increasing the competency of the public.

Section 2. Modernization and risk analysis committee -- terms -- officers -- compensation. (1) Except for interim committee members invited pursuant to [section 1(2)(c)], appointments to the modernization and risk analysis committee are for 2 years, and a member of the committee shall serve until the member's term of office as a legislator ends or until a successor is appointed, whichever occurs first.

(2) The modernization and risk analysis committee shall elect one of its members as presiding officer and other officers that it considers necessary.

(3) Members of the modernization and risk analysis committee and invited interim committee members are entitled to receive compensation and expenses as provided in 5-2-302. Public members are entitled to receive compensation and expenses as provided in 5-2-302 and 5-5-211.

(4) If a vacancy occurs on the modernization and risk analysis committee established in [section 1] when the legislature is not in session, the new member must be appointed by the same method as the original appointment to complete the unexpired term.

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 subsection (5)(b) 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.

(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, *or the modernization and risk analysis committee* 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 *or to the modernization and risk analysis committee* 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 5-12-101, MCA, is amended to read:

"**5-12-101. Title and purpose of chapter.** (1) This chapter may be cited as "The Legislative Finance *and Data Analytics* Act".

(2) Because the legislature is responsible for appropriating public funds, it ~~must~~ *shall* provide for fiscal analysis of state government to accumulate, compile, analyze, and furnish ~~such~~ information ~~bearing upon~~ *on* the financial matters of the state that is relevant to issues of policy and questions of statewide importance.

(3) Because the legislature is responsible for providing a comprehensive system of efficient governance, policy, and appropriations for the state and its political subdivisions, including local governments and schools, analysis of data across all aspects of government revenues, services, and funding is essential.

(4) Because the laws enacted by the legislature remain unless later changed by the legislature, appropriations may impact future generations, and tax and other law changes may impact the state's economy, the legislature needs a data tool to evaluate the impacts of legislation on future generations. The tool should be derived from reliable data sets and numeric in nature to allow the legislature to evaluate different assumptions and potential changes in law 20 years into the future."

Section 5. Section 5-12-301, MCA, is amended to read:

"**5-12-301. Legislative fiscal division.** There is a legislative fiscal division. The legislative fiscal analyst shall manage the legislative fiscal division to support the legislative finance committee *and the modernization and risk analysis committee* and carry out the provisions of this chapter."

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*, data tools,* and recommendations that the legislative fiscal analyst considers desirable to the legislature in accordance with 5-11-210 and make reports*, data tools,* 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~~ *data tools*;

(6) assist the revenue interim committee in performing its revenue estimating duties;

[(7) assist and provide staff for the interim budget committees established in 5-12-501]; ~~and~~

(8) assist and provide staff for the modernization and risk analysis committee; and

~~(8)~~*(9)* review all reports submitted to the legislative fiscal analyst and notify the legislative finance committee [or the appropriate interim budget committee, or both,] of any concerns the fiscal analyst identifies in a report. (Bracketed language terminates December 31, 2025--sec. 12, Ch. 525, L. 2021.)"

Section 7. Repealer. Section 3, Chapter 508, Laws of 2021, is repealed.

Section 8. Codification instruction. [Sections 1 through 2] are intended to be codified as an integral part of Title 5, chapter 12, and the provisions of Title 5, chapter 12, apply to [sections 1 through 2].

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

Approved May 18, 2023

CHAPTER NO. 588

[HB 136]

AN ACT REVISING LAWS RELATED TO UNCLAIMED PROPERTY; PROVIDING DEFINITIONS; AMENDING WHEN CERTAIN CATEGORIES OF PROPERTY ARE PRESUMED ABANDONED; REQUIRING THE HOLDER OF CERTAIN ABANDONED PROPERTY TO LIQUIDATE THE PROPERTY AND REMIT THE PROCEEDS TO THE DEPARTMENT OF REVENUE; PROVIDING FOR AN UNCLAIMED PROPERTY WEBSITE TO BE RUN BY THE DEPARTMENT OF REVENUE; PROVIDING FOR THE CONFIDENTIALITY OF PERSONAL INFORMATION; AND AMENDING SECTIONS 70-9-802, 70-9-803, 70-9-808, 70-9-809, 70-9-810, 70-9-812, 70-9-820, AND 70-9-827, MCA.

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

Section 1. Section 70-9-802, MCA, is amended to read:

"**70-9-802. Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

~~(2)~~*(2)* "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

~~(3)~~*(3)* "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

~~(4)~~*(4)* "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

~~(5)~~*(5)* "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

~~(6)~~*(6)* "Gift certificate" has the meaning provided in 30-14-102.

~~(7)~~*(7)* "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

~~(8)~~*(8)* "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

~~(9)~~*(9)* "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

~~(10)~~*(10)* "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

~~(11)~~*(11)*~~(a)~~*(a)* "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser.

~~(b) The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.~~

(b) The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

~~(12)~~*(12)* "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, ~~and~~ *and* a creditor, claimant, or payee in the case of other property.

~~(13)~~*(13)* "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(14) "Personal information" means:

(a) information that identifies or reasonably can be used to identify an individual, such as a first and last name in combination with the individual's:

(i) social security number or other government-issued number or identifier;

(ii) date of birth;

(iii) home or physical address;

(iv) electronic mail address or other online contact information or internet provider address;

(v) financial account number or credit or debit card number;

(vi) biometric data, health or medical data, or insurance information; or

(vii) passwords or other credentials that permit access to an online account or other account; and

(b) personally identifiable financial or insurance information, including nonpublic personal information defined by applicable federal law.

~~(14)~~*(15)* (a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business or, except as provided in subsection ~~(14)(b)~~ *(15)(b)*, by a government, governmental subdivision, agency, or instrumentality and all income or increments from the property. The term includes property that is referred to as or evidenced by:

(i) money, *virtual currency,* check, draft, deposit, interest, or dividend;

(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) bond, debenture, note, or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(b) The term does not include*:*

(i) property that is held, issued, or owed by a local government entity, as defined in 2-7-501*;*

(ii) property held in state and local government sponsored retirement plans governed by Title 19;

(iii) property held in a plan as described in section 529A of the Internal Revenue Code, 26 U.S.C. 529A, as amended.

~~(15)~~*(16)* "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

(17) "Security" means:

(a) a security as defined in 30-8-112;

(b) a security entitlement as defined in 30-8-112, including a customer security account held by a registered broker-dealer, to the extent the financial assets held in the security account are not:

(i) registered on the books of the issuer in the name of the person for which the broker-dealer holds the assets;

(ii) payable to the order of the person; or

(iii) specifically indorsed to the person; or

(c) an equity interest in a business association not included in subsection (17)(a) or (17)(b).

~~(16)~~*(18)* "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

~~(17)~~*(19)* "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

(20) (a) "Virtual currency" means a digital representation of value used as a medium of exchange, unit of account, or store of value that does not have legal tender status recognized by the United States.

(b) The term does not include:

(i) the software or protocols governing the transfer of the digital representation of value;

(ii) game-related digital content; or

(iii) a loyalty card.

(21) "Worthless security" means a security whose cost of liquidation and delivery to the administrator would exceed the value of the security on the date a report is due under this part."

Section 2. Section 70-9-803, MCA, is amended to read:

"**70-9-803. Presumptions of abandonment.** (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

~~(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:~~

~~(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or~~

~~(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;~~

~~(d)~~*(c)* debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

~~(e)~~*(d)* demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

~~(f)~~*(e)* money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

~~(g)~~*(f)* gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value. A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal year sold no more than $200,000 in gift certificates, which amount must be adjusted by November of each year by the inflation factor. The amount considered abandoned for a person who sells more than the amount that triggers presumption of abandonment is the value of gift certificates greater than that trigger.

~~(h)~~*(g)* amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable ~~upon~~ *on* proof of death, ~~3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based~~ *3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based*;

~~(i)~~*(h)* property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

~~(j)~~*(i)* property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

~~(k)~~*(j)* property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

~~(l)~~*(k)* wages or other compensation for personal services, 1 year after the compensation becomes payable;

~~(m)~~*(l)* deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

~~(n) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;~~

(m) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

~~(o)~~*(n)* a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date;

~~(p)~~*(o)* an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date; ~~and~~

(p) a security, as provided in [section 9]; and

~~(q)~~*(q)* all other property, ~~5~~ *5* years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) ~~the~~ *the* making of a deposit to or withdrawal from an account in a financial organization; ~~and~~ *and*

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to:

(a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; or

(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located.

(7) For the purposes of this section, "inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2015."

Section 3. Section 70-9-808, MCA, is amended to read:

"**70-9-808. Report of abandoned property.** (1) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(2) The report must be verified and must contain:

(a) a description of the property;

(b) except with respect to a traveler's check or money order, the name, if known, and last-known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of $50 or more;

(c) an aggregated amount of items valued under $50 each;

(d) in the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;

(e) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator and any amounts owing to the holder;

(f) the date, if any, on which the property became payable, demandable, or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(g) other information that the administrator by rule prescribes as necessary for the administration of this part*, including personal information as defined in 70-9-802 about the apparent owner or the apparent owner's property to the extent not otherwise prohibited by federal law*.

~~(3)~~*(3)* If a holder of property presumed abandoned is a successor to another person that previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

~~(4)~~*(4)* The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

~~(5)~~*(5)* The holder of property that is presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this part if:

(a) the holder has in its records an address for the apparent owner that the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by a statute of limitations; and

(c) the value of the property is $50 or more.

~~(6)~~*(6)* Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

~~(7)~~*(7)* The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection ~~(5)~~ *(5)*."

Section 4. Section 70-9-809, MCA, is amended to read:

"**70-9-809. Payment or delivery of abandoned property ~~to~~ administrator.** (1) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by 70-9-808, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed; however, if the property is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until 60 days after filing the report required by 70-9-808.

(2) If the property reported to the administrator is a security or security entitlement under Title 30, chapter 8, ~~the administrator is an appropriate person to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30, chapter 8.~~ *the administrator is an appropriate person to make an endorsement, instruction, or entitlement order*

on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30, chapter 8.

(3) If the property reported to the administrator is a virtual currency, the holder shall liquidate the virtual currency within 30 days of filing the report and remit the proceeds in United States currency to the administrator. The holder may not sell a virtual currency for less than the price prevailing on an established virtual currency exchange at the time of the sale. The holder may sell a virtual currency not listed on an established virtual currency exchange by any commercially reasonable method. Prior to selling a virtual currency, the holder shall send written notice to the apparent owner not less than 60 days before the sale that the virtual currency will be liquidated.

~~(3) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to 30-8-415, but an indemnity bond is not required.~~

(4) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with 70-9-811."

Section 5. Section 70-9-810, MCA, is amended to read:

"**70-9-810. Notice and publication of lists of abandoned property.** (1) ~~The administrator shall publish a notice not later than November 30 of the year following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last-known address of any person named in the notice. If a holder does not report an address for the apparent owner or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property.~~ *The administrator shall publish every 3 months in at least one newspaper of general circulation in each county in this state in which a newspaper is published an advertisement of property held by the administrator that:*

(a) directs the public to the administrator's unclaimed property website provided in subsection (2);

(b) includes a telephone number and electronic mail address to contact the administrator to inquire about or claim property; and

(c) includes a statement that a person may access the internet by a computer to search for unclaimed property and a computer may be available as a service to the public at a local public library.

(2) The administrator shall maintain an unclaimed property website that can be accessed and is easily searchable by the public. The ~~form~~ *website* must contain:

(a) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(b) the last-known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(c) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(d) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

~~(2) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than $50 or information concerning a traveler's check, money order, or similar instrument.~~"

Section 6. Section 70-9-812, MCA, is amended to read:

"**70-9-812. Public sale of abandoned property.** (1) Except as otherwise provided in this section, the administrator, within 3 years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state, which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least 3 weeks before sale, ~~in a newspaper of general circulation in the county in which the property is to be sold~~ *on the unclaimed property website maintained by the administrator*.

~~(2) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of 3 years after their delivery to the administrator, a person making a claim under this part before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this part after the expiration of the 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.~~

(2) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of 3 years after their delivery to the administrator, a person making a claim under this part before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this part after the expiration of the 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.

~~(3)~~*(3)* A purchaser of property at a sale conducted by the administrator pursuant to this part takes the property free of all claims of the owner or

previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership."

Section 7. Section 70-9-820, MCA, is amended to read:

"**70-9-820. Requests for reports ~~and~~, examination of records*, and confidentiality*.** (1) The administrator may require a person that has not filed a report or a person that the administrator believes has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this part, describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(2) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this part. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this part. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(3) The administrator, at reasonable times, may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial organization that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (2) to both the association or organization and the agent at least 90 days before the examination.

(4) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination *and personal information obtained from a holder's reports, except for the personal information published pursuant to 70-9-810,* are confidential and are not public records, but the documents and papers may be:

(a) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this part;

(b) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(c) produced pursuant to subpoena or court order; or

(d) disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection (4) if the other state is bound to keep the documents and papers confidential.

(5) The administrator may only disclose confidential personal information to an apparent owner of unclaimed property, or the apparent owner's personal representative, power of attorney, attorney-in-fact, or agent, or a beneficiary of the apparent owner or the unclaimed property.

~~(5)~~*(6)* If an examination of the records of a person results in the disclosure of property reportable under this part, the administrator may assess the cost of the examination against the holder at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (3) may be assessed only against the business association or financial organization.

~~(6)~~*(7)* If, after July 1, 1997, a holder does not maintain the records required by 70-9-821 and the records of the holder available for the periods subject to this part are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the

administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported."

Section 8. Section 70-9-827, MCA, is amended to read:

"**70-9-827. Transitional provisions.** (1) An initial report filed under this part for property that was not required to be reported before July 1, 1997, but that is subject to this part must include all items of property that would have been presumed abandoned during the 10-year period next preceding July 1, 1997, as if this part had been in effect during that period.

(2) This part does not relieve a holder of a duty that arose before July 1, ~~1997~~ *2023*, to report, pay, or deliver property. Except as otherwise provided in 70-9-819(2), a holder that did not comply with the law in effect before July 1, ~~1997~~ *2023*, is subject to the applicable provisions for enforcement and penalties that then existed, which are continued in effect for the purpose of this section."

Section 9. When security presumed abandoned. (1) A security is presumed abandoned 3 years after:

(a) except as provided in subsection (1)(b), the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States postal service; or

(b) if the second communication is sent later than 30 days after the date the first communication is returned to the holder undelivered by the United States postal service, the date the first communication was returned to the holder undelivered by the United States postal service.

(2) If the holder does not send communications to the apparent owner of a security by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the security by sending the apparent owner an electronic mail communication not later than 2 years after the apparent owner's last indication of interest in the security. However, the holder shall promptly attempt to contact the apparent owner by first-class United States mail if:

(a) the holder does not have the information needed to send the apparent owner an electronic mail communication or the holder believes that the apparent owner's electronic mail address in the holder's records is invalid;

(b) the holder receives notification that the electronic mail communication was not received; or

(c) the apparent owner does not respond to the electronic mail communication within 30 days after the communication was sent.

(3) If first-class United States mail sent under subsection (2) is returned to the holder undelivered by the United States postal service, the security is presumed abandoned 3 years after the date the mail is returned.

Section 10. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 70, chapter 9, part 8, and the provisions of Title 70, chapter 9, part 8, apply to [section 9].

Approved May 18, 2023

CHAPTER NO. 589

[HB 118]

AN ACT PROVIDING THAT A WARRANT FOR DISTRAINT CREATES A LIEN AGAINST PERSONAL PROPERTY LOCATED WITHIN THE BOUNDARIES OF MONTANA OWNED BY A DELINQUENT TAXPAYER; AMENDING SECTION 15-1-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-1-701, MCA, is amended to read:

"**15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of the department or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy ~~upon~~ *on* and sell the real and personal property of a delinquent taxpayer.

(2) *(a)* ~~Upon~~ *On* filing the warrant as provided in 15-1-704, there is a lien*:*

(i) against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed*; and*

(ii) against money of the delinquent taxpayer in the state limited to:

(A) all funds in demand, savings, or time deposits held in banking institutions in which a delinquent taxpayer has ownership interest;

(B) wages and compensation owed to a delinquent taxpayer; and

(C) stock, equity interests, and investment accounts in which the delinquent taxpayer has ownership interest.

(b) The lien provided for in subsection (2)(a)(ii):

(i) may attach to the money in any county of the state, regardless of the location of the delinquent taxpayer or the county in which the warrant is filed. However, until the execution of the warrant and notice of levy occurs as provided in 15-1-706, the property described in subsection (2)(a)(ii) is not subject to or affected by the lien; and

(ii) may not be enforced against a delinquent taxpayer's money received by and in the possession of a person in a county where the warrant is not filed if the recipient had no actual notice or no actual knowledge of the execution of the warrant and notice of levy that created the lien.

(3) The resulting lien *in subsection (2)* is treated in the same manner as a properly docketed judgment lien, the department is a judgment lien creditor, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the department may enforce the judgment lien at any time within 10 years of its creation or effective date, whichever is later.

~~(3)~~*(4)* A warrant may be issued for the amount of unpaid tax plus accumulated penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued penalty and interest from the date of the warrant. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

~~(4)~~*(5)* The accelerated priority date provided for in subsection ~~(3)~~ *(4)* is not valid against purchasers, holders of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint."

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

Approved May 18, 2023

CHAPTER NO. 590

[HB 101]

AN ACT REVISING LICENSING RECIPROCITY PROVISIONS FOR OUT-OF-STATE PRACTITIONERS LICENSED BY THE BOARD OF BEHAVIORAL HEALTH; ESTABLISHING THAT LICENSURE IN ANOTHER STATE IS SUFFICIENT TO OBTAIN MONTANA LICENSURE FOR NEW

RESIDENTS IF CERTAIN CONDITIONS EXIST; AND AMENDING SECTION 37-1-304, MCA.

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

Section 1. Licensure reciprocity for out-of-state applicants. (1) An applicant for reciprocity licensure is subject to the application procedure in this chapter and must have an active license in good standing from a jurisdiction whose license qualifications, measured at the time of application to this state, are substantially equivalent to the license qualifications in this state as determined by the department.

(2) If the qualifications in subsection (1) are not substantially equivalent, the department shall refer the application to the board to determine if the deficiency can be addressed by the applicant's actual qualifications and work experience.

Section 2. Licensure reciprocity for out-of-state applicants. (1) An applicant for reciprocity licensure is subject to the application procedure in this chapter and must have an active license in good standing from a jurisdiction whose license qualifications, measured at the time of application to this state, are substantially equivalent to the license qualifications in this state as determined by the department.

(2) If the qualifications in subsection (1) are not substantially equivalent, the department shall refer the application to the board to determine if the deficiency can be addressed by the applicant's actual qualifications and work experience.

Section 3. Licensure reciprocity for out-of-state applicants. (1) An applicant for reciprocity licensure is subject to the application procedure in this chapter and must have an active license in good standing from a jurisdiction whose license qualifications, measured at the time of application to this state, are substantially equivalent to the license qualifications in this state as determined by the department.

(2) If the qualifications in subsection (1) are not substantially equivalent, the department shall refer the application to the board to determine if the deficiency can be addressed by the applicant's actual qualifications and work experience.

Section 4. Licensure reciprocity for out-of-state applicants. (1) An applicant for reciprocity licensure is subject to the application procedure in this chapter and must have an active license in good standing from a jurisdiction whose license qualifications, measured at the time of application to this state, are substantially equivalent to the license qualifications in this state as determined by the department.

(2) If the qualifications in subsection (1) are not substantially equivalent, the department shall refer the application to the board to determine if the deficiency can be addressed by the applicant's actual qualifications and work experience.

Section 5. Certification reciprocity for out-of-state applicants. (1) An applicant for reciprocity certification is subject to the application procedure in this chapter and must have an active certification in good standing from a jurisdiction whose certification qualifications, measured at the time of application to this state, are substantially equivalent to the certification qualifications in this state as determined by the department.

(2) If the qualifications in subsection (1) are not substantially equivalent, the department shall refer the application to the board to determine if the deficiency can be addressed by the applicant's actual qualifications and work experience.

Section 6. Section 37-1-304, MCA, is amended to read:

"**37-1-304. Licensure of out-of-state applicants -- reciprocity.** (1) ~~A~~ *Except as provided in [sections 1, 2, 3, 4, and 5], the* board 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 another state, 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~~ *Except as provided in [sections 1, 2, 3, 4, and 5], 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 7. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 22, part 3, and the provisions of Title 37, chapter 22, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 23, part 2, and the provisions of Title 37, chapter 23, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 37, chapter 35, part 2, and the provisions of Title 37, chapter 35, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 37, chapter 37, part 2, and the provisions of Title 37, chapter 37, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 37, chapter 38, part 2, and the provisions of Title 37, chapter 38, apply to [section 5].

Approved May 18, 2023

CHAPTER NO. 591

[HB 95]

AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS; REVISING WHOLESALER LAWS; REVISING REQUIREMENTS BY THE DEPARTMENT OF REVENUE; REMOVING REFERENCES TO MALT LIQUORS; REVISING LAWS RELATING TO THE CONVEYANCE OF ALCOHOLIC BEVERAGES; REVISING LAWS RELATING TO PAYMENT BY RETAIL LICENSEES TO BREWERS, BEER IMPORTERS, OR WHOLESALERS; UPDATING LANGUAGE RELATING TO REFILLING LIQUOR BOTTLES; REVISING LAWS RELATING TO RAFFLES OR AUCTIONS; REVISING LAWS

RELATING TO REFERENCING APPLICABLE FEDERAL LAWS; REVISING LAWS RELATING TO SHIPMENTS BY COMMON CARRIERS; REVISING LAWS RELATING TO TABLE WINE; AMENDING SECTIONS 16-3-101, 16-3-103, 16-3-104, 16-3-106, 16-3-230, 16-3-233, 16-3-243, 16-3-301, 16-3-306, 16-3-308, 16-3-316, 16-3-401, 16-3-411, AND 16-6-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-3-101, MCA, is amended to read:

"**16-3-101. Alcoholic beverage transactions -- only in accordance with code.** (1) A person who manufactures, imports, distributes, *wholesales,* or sells alcoholic beverages or the person's agent may not give or sell to any person within the state any alcoholic beverage except as may be permitted by and in accordance with the provisions of this code.

(2) (a) Except as otherwise provided by this code, a person or the person's agent may not ship, transport, or consign or cause to be shipped, transported, or consigned:

(i) any alcoholic beverage to any person in this state ~~who does not hold a valid wholesaler's license or connoisseur's license issued by the department~~; or

(ii) any liquor except to the state liquor warehouse.

(b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by telephone, computer, or other device~~, except by persons holding a valid connoisseur's license provided for in 16-4-901~~.

~~(3) Except as otherwise provided by this code, alcoholic beverages shipped, transported, or consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer.~~"

Section 2. Section 16-3-103, MCA, is amended to read:

"**16-3-103. Unlawful sales solicitation or advertising -- exceptions.** (1) A person within the state may not:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless permitted to do so under rules that are promulgated by the department to govern the activities;

(b) canvass for or solicit orders for the purchase or sale of any beer ~~or malt liquor~~ except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with the rules.

(2) This section does not apply to:

(a) the department, any act of the department, any agency liquor store;

~~(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of employment as the agent, operator, or employee;~~

~~(c)~~*(b)* the sale and serving of beer in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to 16-4-111 or 16-4-204; or

~~(d)~~*(c)* the sale of alcohol at a sporting event conducted at a Montana university as provided in 16-4-112."

Section 3. Section 16-3-104, MCA, is amended to read:

"**16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler.** ~~It shall be unlawful for the~~ *The* operator of any common carrier or its employees ~~to make sale of~~ *may not sell* or dispose of any beer ~~or malt liquors~~ except ~~such as shall have~~ *beer that has* been lawfully acquired or purchased from a ~~duly~~licensed brewer, beer importer, or wholesaler."

Section 4. Section 16-3-106, MCA, is amended to read:

"**16-3-106. Conveyance of ~~liquors, table wines, and beer~~ *alcoholic beverages* -- opening alcoholic beverages during transit forbidden.** (1) ~~It is lawful to carry or convey liquor or table wine to any agency liquor store and to and from the state liquor warehouse or any depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules promulgated under this code, it is lawful for any common carrier or other person to carry or convey liquor or table wine sold by a vendor from an agency liquor store or to carry or convey beer, when lawfully sold by a brewer, from the premises where the beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the liquor, table wine, or beer may be lawfully delivered under this code and the rules promulgated under this code~~ *It is lawful to carry or convey alcoholic beverages to any place to which the alcoholic beverages may be lawfully delivered under this code and the rules of the department.*

(2) ~~A common carrier or any other person may not~~ *It is unlawful to:*

(a) open, break, or allow to be opened or broken any package or vessel containing an alcoholic beverage*;* or

(b) drink or use or allow to be drunk or used any alcoholic beverage while *it is* being carried or conveyed."

Section 5. Section 16-3-230, MCA, is amended to read:

"**16-3-230. Beer required to be shipped to wholesaler.** Except as provided in 16-3-214 *and 16-4-901*, all beer that is to be distributed in Montana, whether manufactured outside of or within the state ~~of Montana~~, must be consigned to and shipped, either directly or via a licensed storage depot, to a licensed wholesaler and unloaded into the wholesaler's warehouse ~~in Montana~~ or subwarehouse in Montana. A brewer or beer importer ~~may sell only to wholesalers from a storage depot in Montana and~~ shall maintain records of all beer, including the name or kind received, on hand, and sold. The records may at any time be inspected by a representative of the department. The wholesaler shall distribute the beer from the warehouse or subwarehouse and shall keep records at the wholesaler's principal place of business of all beer, including the name or kind received, on hand, sold, and distributed. The records may be inspected by a representative of the department at any time."

Section 6. Section 16-3-233, MCA, is amended to read:

"**16-3-233. Sales to public by wholesaler unlawful.** ~~A~~ *Except as provided in 16-3-316, a* wholesaler may not give, sell, deliver, or distribute any beer purchased or acquired by the wholesaler to the public."

Section 7. Section 16-3-243, MCA, is amended to read:

"**16-3-243. Seven-day credit limitation.** *(1)* ~~No sale or delivery of beer shall be made to any retail licensee except for cash paid within 7 days after the delivery thereof,~~ *A brewer, beer importer, or beer wholesaler may not sell or deliver beer unless a retail licensee pays within 7 days of the delivery* and ~~in no event shall any brewer, beer importer, or wholesaler~~ *may not* extend more than 7 days' credit ~~on account of such~~ *for payment for the* beer to ~~a~~ *the* retail licensee.~~, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor~~

(2) A retail licensee shall pay a brewer, beer importer, or beer wholesaler in full for beer within 7 days from *the date of* delivery ~~thereof~~ *and may not accept more than 7 days' credit from a brewer, beer importer, or beer wholesaler.* ~~A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code.~~ *Failure to pay in full within 7 days from the date of delivery is considered an impermissible acceptance of credit.*

(3) Any extension or acceptance of credit in violation ~~hereof shall be regarded and construed as~~ *of this section is considered* rendering or receiving *of* financial assistance.~~, and the licenses of brewers,~~ *Brewers,* beer importers, *beer* wholesalers, and retail licensees ~~involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion~~ *who violate this section are subject to the penalty provisions of 16-4-406*"

Section 8. Section 16-3-301, MCA, is amended to read:

"**16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1) ~~It~~ *Except as allowed in 16-4-213(8), it* is unlawful for a licensed retailer to*:*

(a) purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler licensed under the provisions of this code ~~except as allowed in 16-4-213(8).~~*;*

(b) purchase or acquire table wine from anyone except a liquor store agent or winery or table wine distributor licensed under the provisions of this code;

(c) purchase or acquire wine from anyone except a liquor store agent or winery;

~~(2)~~*(d)* ~~It is unlawful for a licensed retailer to~~ transport ~~beer or wine~~ *alcoholic beverages* from one licensed premises or other facility to any other licensed premises owned by the licensee ~~except as allowed in 16-4-213(8).~~*; or*

~~(3)~~*(e)* ~~It is unlawful for a licensed retailer to~~ purchase or acquire liquor from anyone except an agency liquor store ~~except as allowed in 16-4-213(8)~~.

~~(4)~~*(2)* It is unlawful for a licensed *distributor or* wholesaler to purchase beer*, table wine,* or wine from anyone except a brewery, winery, or wholesaler licensed or registered under this code.

(3) It is unlawful for a liquor store agent to purchase table wine or sacramental wine from anyone except a table wine distributor licensed under this code.

~~(5)~~*(4)* It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age; or

(b) any person actually, apparently, or obviously intoxicated.

~~(6)~~*(5)* Any person under 21 years of age or any other person who knowingly misrepresents the person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the licensee and, ~~upon~~ *on* conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

~~(7)~~*(6)* All licensees shall display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

~~(8)~~*(7)* For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance ~~upon~~ *on* the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

Section 9. Section 16-3-306, MCA, is amended to read:

"**16-3-306. Proximity to churches and schools restricted.** (1) Except as provided in subsections (2) through (4), a retail license may not be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation ~~upon~~ *on* the department's licensing authority.

(2) ~~However, the~~ *The* department may renew a license*, approve the transfer of ownership of a license, or allow the current licensee to apply for a new license type* for any establishment located in violation of this section if the licensee does not relocate an entrance any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has supplanted the provisions of subsection (1) as provided in 16-3-309."

Section 10. Section 16-3-308, MCA, is amended to read:

"**16-3-308. Refilling of liquor bottles prohibited.** (1) ~~No~~ *A* person *who sell or offers liquor for sale*, or ~~the~~ *an* agent or employee of ~~such~~ *the* person, ~~who sells or offers liquor for sale~~ may *not*:

(a) place in any liquor bottle any liquor ~~whatsoever~~ other than that contained in ~~such~~ *the* bottle at the time of ~~stamping by the federal government~~ *bottling by an alcoholic beverage manufacturer*;

(b) possess any liquor bottle in which any liquor has been placed in violation of subsection (1)(a);

(c) by the addition of any substance ~~whatsoever~~ to any liquor bottle, in any manner alter or increase any portion of the original contents contained in ~~such~~ *the* bottle at the time of ~~stamping by the federal government~~ *bottling by an alcoholic beverage manufacturer*; or

(d) possess any liquor bottle~~, any portion of the contents~~ of which *any portion of its contents* has been altered or increased in violation of subsection (1)(c).

(2) This section does not prohibit any reuse of liquor bottles ~~which~~ *that* is permitted under laws or regulations of the federal government."

Section 11. Section 16-3-316, MCA, is amended to read:

"**16-3-316. Fundraising events for nonprofit and tax-exempt organizations.** (1) A nonprofit organization governed under Title 35, chapter

2, or an organization designated as tax-exempt under the provisions of section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended, may raffle or auction alcoholic beverages at fundraising events. Any alcoholic beverage raffled or auctioned must be given by the organization to the raffle or auction winner sealed in its original package.

(2) If the fundraising event is held on the premises of a business licensed under this code or on premises for which a permit has been issued under this code, the alcoholic beverage may not be consumed on the premises. An alcoholic beverage that is on a licensee's premises solely for a fundraising event under this section does not constitute a violation by the licensee of 16-3-301(1)*(a)* or 16-6-303.

(3) A nonprofit or tax-exempt organization may hold no more than four events per calendar year at which alcoholic beverages are raffled or auctioned. The duration of each event must be announced at the time any raffle tickets are sold or auction bids are received. Raffles and auctions held pursuant to this section must be to directly support bona fide charitable, nonprofit, or tax-exempt activities.

(4) An alcoholic beverage for raffle or auction must be:

(a) acquired, whether by purchase or donation, by the organization from a retailer *or manufacturer* licensed under the provisions of this code~~, excluding a restaurant beer and wine licensee~~;

(b) ~~purchased~~ *acquired* ~~by the organization~~*, whether by purchase at not less than the posted price or by donation, by the organization* from an agency liquor store ~~at not less than the posted price~~; or

(c) received by the organization as a donation at no cost to the organization from any other person ~~except one licensed as a wholesaler or distributor under this code~~ *except one licensed as a wholesaler or distributor under this code.*

(5) No proceeds from the raffle or auction of alcoholic beverages may go to anyone who provided the alcoholic beverages to the organization for the raffle or auction.

(6) For a raffle or auction described in subsection (1), raffle tickets may not be sold to, and auction bids may not be solicited or received from, any person under 21 years of age. The organization raffling or auctioning alcoholic beverages may not sell, deliver, or give away any alcoholic beverage to a person under 21 years of age or to any person actually, apparently, or obviously intoxicated.

(7) As used in this section:

(a) "auction" means the sale of an item or items, which may include alcoholic beverages, whereby the item for sale is sold to the highest bidder at the bid price. An auctioned item or items may have a reserve price.

(b) "raffle" means an event in which a nonprofit or tax-exempt organization sells tickets and each ticket gives the purchaser of the ticket the chance to win a prize, which may include alcoholic beverages, with the winner determined by a random drawing."

Section 12. Section 16-3-401, MCA, is amended to read:

"**16-3-401. Short title -- public policy -- purpose.** (1) This part may be cited as the "Wine Distribution Act".

(2) The public policy of the state of Montana is to maintain a system to provide for, regulate, and control the acquisition, importation, and distribution of table wine.

(3) This part governs wineries, table wine distributors, and wine retailers.

(4) This code does not prohibit the manufacture of wine, for personal or family use and not intended for sale, that meets the exemptions of 26 U.S.C. 5042(a)(2) and regulations implementing that section, including the making

of wine, for personal or family use, on premises other than those of the person making the wine."

Section 13. 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 *table* wine it produces at wholesale to *table* 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~~ *no more than twelve* special event ~~permit~~ *permits* 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;

(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; or

(j) offer wine in its original packaging, prepared servings, or growlers for curbside pickup between 8 a.m. and 2 a.m.

(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 *9-liter* 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 *9-liter* cases a year.

(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.

(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, pursuant to 16-1-411, electronically file a report, in the manner and form prescribed by the department, reporting the amount of wine or hard cider, or both, that it shipped in the state during the preceding 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 wine or hard cider, or both, within this state conforms to the requirements of this code."

Section 14. Section 16-6-314, MCA, is amended to read:

"**16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by underage person.** (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

(2) If a retail licensee is convicted of an offense under this code, the licensee's license must be immediately revoked or, in the discretion of the department, another sanction must be imposed as provided under 16-4-406.

(3) A person under 21 years of age who violates 16-3-301~~(5)~~*(4)* or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

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

Approved May 18, 2023

CHAPTER NO. 592

[HB 62]

AN ACT GENERALLY REVISING LAWS RELATED TO BAIL BONDS; CREATING A SURETY BAIL BOND INSURANCE LICENSE; PROVIDING FOR APPLICATION AND TRAINING REQUIREMENTS FOR A SURETY BAIL BOND INSURANCE LICENSE; PROVIDING ARREST AUTHORITY TO A SURETY BAIL BOND INSURANCE PROVIDER; AMENDING SECTIONS 33-17-212, 33-26-108, 46-9-401, AND 46-9-510, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Special qualifications for surety bail bond insurance license. (1) Before approving an application for a surety bail bond insurance license, the commissioner shall verify that the individual:

(a) is a natural person at least 21 years of age;

(b) is a citizen of the United States or is lawfully entitled to remain and work in the United States;

(c) has obtained a high school diploma, a general equivalency diploma or equivalent document, or an equivalent education as determined by the commissioner;

(d) has complied with the requirements of 33-17-211; and

(e) has successfully completed the training required in [section 2].

(2) An individual may not receive, renew, or hold a surety bail bond license if the individual:

(a) has been convicted of a felony in this state or of any offense committed in another state that would be a felony if committed in this state; or

(b) has been convicted of an offense involving dishonesty, a breach of trust, violence, threatened violence, or the unlawful use, sale, or possession of a controlled substance.

Section 2. Surety bail bond insurance license -- basic course of training -- temporary license. (1) Except as otherwise provided in this section, an applicant for a surety bail bond insurance license shall satisfactorily complete a basic course of training for bail enforcement agents that is approved by the commissioner.

(2) The basic course of training must consist of at least 40 hours of training that includes instruction in:

(a) the following areas of the law:

(i) constitutional law;

(ii) procedures for arresting a defendant and surrendering a defendant into custody;

(iii) civil liability;

(iv) the civil rights of a person who is detained in custody;

(v) the use of force; and

(vi) the history and principles of bail;

(b) procedures for field operations, including without limitation:

(i) handling a person with mental illness or a person who is under the influence of alcohol or a controlled substance; and

(ii) the care and custody of a prisoner;

(c) the skills required of bail enforcement agents, including without limitation:

(i) writing reports and completing forms;

(ii) methods of arrest;

(iii) nonlethal weapons;

(iv) the safe retention of weapons;

(v) qualifications for the use of firearms; and

(vi) defensive tactics; and

(d) the following subjects:

(i) first aid used in emergencies; and

(ii) cardiopulmonary resuscitation.

(3) In lieu of completing the basic course of training required by subsection (1), an applicant may submit proof to the commissioner that the applicant has completed a course of training required by a municipal, state, or federal law enforcement agency or a branch of the armed forces to carry out the duties of a peace officer.

(4) An applicant for a surety bail bond insurance license shall complete the training required by this section within 12 months after the date the applicant is employed by a licensed surety bail bond agent. The commissioner may issue a temporary license to an applicant who has not completed the training if the applicant is otherwise qualified to be issued a license as a surety bail bond agent. The temporary license:

(a) authorizes the applicant to act as a surety bail bond agent while employed by a licensed surety bail bond agent;

(b) is valid for up to 12 months; and

(c) may not be renewed.

Section 3. Arrest by surety bail bond insurance producer. (1) A surety bail bond insurance producer who has probable cause to believe that a principal insured by the surety insurer to which the producer is appointed will fail to appear in court, in violation of 46-9-503(2), or has violated a condition of their release, may use reasonable force to arrest and detain the principal only as described in 46-9-510 and this section. The producer shall:

(a) except under exigent circumstances, prior to and no more than 6 hours before attempting to apprehend the principal, notify the local police department or sheriff's office of the intent to apprehend the principal in that jurisdiction by telephoning nonemergency dispatch and provide:

(i) the name and producer license number of the individual who will be effecting the arrest; and

(ii) the name and approximate location of the principal; and

(b) immediately after the arrest of the principal, notify the local police department or sheriff's office by telephoning nonemergency dispatch and provide:

(i) the name and producer license number of the individual who effected the arrest;

(ii) the name of the principal arrested and the description of the location of the arrest; and

(iii) if no notification was given under subsection (1)(a), a detailed explanation of the reasons a notification could not be given under subsection (1)(a).

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

(a) "Principal" means a defendant or a witness who has been admitted to bail and who is obligated to appear in court as required on penalty of forfeiting bail under a commercial bail bond.

(b) "Surety bail bond insurance producer" or "producer" means an insurance producer who is licensed to sell, solicit, or negotiate commercial bail bonds pursuant to Title 33, chapters 17 and 26.

Section 4. Section 33-17-212, MCA, is amended to read:

"**33-17-212. Examination required -- exceptions -- fees.** (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) (a) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(b) The commissioner may not charge a fee for an applicant taking an examination pertaining to prepaid legal insurance. However, the commissioner may contract with an outside testing service for administering the examination, and the commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) Except as provided in subsection (6), if the applicant is a business entity, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license must meet the qualifications provided for in this section.

(5) Examination of an applicant for a license must cover only the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance, which for the purposes of this provision includes marine insurance;

(d) casualty insurance;

(e) surety insurance;

(f) surety bail bond insurance;

~~(f)~~*(g)* limited lines credit insurance;

~~(g)~~*(h)* title insurance;

~~(h)~~*(i)* prepaid legal insurance as provided for in 33-1-215.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;

(c) an applicant for a license as a nonresident insurance producer;

(d) a limited lines travel insurance producer and those registered under the limited lines travel insurance producer's license pursuant to 33-17-1402;

(e) an association applying for a license under 33-17-211; or

(f) a casualty insurance producer for the purposes of a separate exam for prepaid legal insurance if the casualty insurance producer sells prepaid legal insurance as of April 26, 2013, and continues to maintain a license in good standing as a casualty insurance producer.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 5. Section 33-26-108, MCA, is amended to read:

"**33-26-108. Rulemaking authority for surety insurers.** The commissioner may adopt rules regarding surety insurers who sell, solicit, or negotiate commercial bail bonds *and effect arrests or surrenders pursuant to Title 46, chapter 9*. The rules must include but are not limited to rules regarding the receipt of collateral, the description of collateral received, the penalty for failure to return collateral, ~~and~~ an annual list of forfeitures of bonds*, and the form and manner for reporting surrenders and arrests effected under Title 46, chapter 9*."

Section 6. Section 46-9-401, MCA, is amended to read:

"**46-9-401. Forms of bail.** (1) Bail may be furnished in the following ways:

(a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds, certificates of deposit, or other personal property approved by the court;

(b) by pledging real estate situated within the state with an unencumbered equity, not exempt, owned by the defendant or sureties at a value double the amount of the required bail;

(c) by posting a written undertaking executed by the defendant and by two sufficient sureties;

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company; or

(e) by posting an offender's driver's license in lieu of bail if the summons describes a violation of any offense as provided in 61-5-214 and if the offender is the holder of an unexpired driver's license.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court.

~~(3) This chapter does not prohibit a surety from surrendering the defendant pursuant to 46-9-510 in a case in which the surety feels insecure in accepting liability for the defendant.~~

~~(4)~~*(3)* Whenever a driver's license is accepted in lieu of bail, the judge shall return the driver's license to the defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a $25 administrative fee has been paid to the court."

Section 7. Section 46-9-510, MCA, is amended to read:

"**46-9-510. Surrender of defendant.** (1) ~~At any time before the forfeiture of bail or within 90 days after forfeiture~~ *At any time before the forfeiture of bail or within 90 days after forfeiture*:

(a) the defendant may surrender to the court or any peace officer of this state; or

(b) ~~the surety company~~ *a surety bail bond insurance producer licensed to sell, solicit, or negotiate commercial bail bonds pursuant to Title 33, chapter 17,* may arrest the defendant *pursuant to [section 3]* and surrender the defendant to the court, any peace officer, or any detention center facility of this state. *Any arrest or surrender pursuant to this subsection (1) must be reported to the commissioner of insurance on a form and in a manner to be determined by the commissioner.*

(2) The peace officer or detention center facility shall detain the defendant in custody as upon commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the defendant. The court shall then order the bail exonerated."

Section 8. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 46, chapter 6, and the provisions of Title 46, chapter 6, applies to [section 3].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Coordination instruction. If both Senate Bill No. 172 and [this act] are passed and approved, then Senate Bill No. 172 is void.

Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2024.

(2) [Sections 1 and 5 through 10] and this section are effective on passage and approval.

Approved May 18, 2023

CHAPTER NO. 593

[HB 35]

AN ACT REVISING COUNTY WATER AND/OR SEWER DISTRICT ADMINISTRATION LAWS; REMOVING CERTAIN APPOINTED COUNTY WATER AND/OR SEWER DISTRICT BOARD POSITIONS; ALLOWING FOR NONVOTING EX OFFICIO MEMBERS ON A COUNTY WATER AND/OR SEWER DISTRICT BOARD IN CERTAIN CIRCUMSTANCES; REQUIRING A MUNICIPAL APPOINTMENT IN DISTRICTS THAT PURCHASE WATER FROM A MUNICIPALITY; CLARIFYING THE DATE A DIRECTOR'S TERM OF OFFICE BEGINS; REMOVING BOND REQUIREMENTS OF CERTAIN COUNTY WATER AND/OR SEWER DISTRICT ADMINISTRATIVE PERSONNEL; AMENDING SECTIONS 7-13-2231, 7-13-2232, 7-13-2233, 7-13-2234, 7-13-2259, AND 7-13-2262, MCA; REPEALING SECTION 7-13-2279, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-13-2231, MCA, is amended to read:

"**7-13-2231. Election or appointment of board of directors.** (1) The district shall elect a board of directors, except as provided in subsection (2).

(2) If no qualified electors reside in the district at a time when directors of the district are to be elected, the directors must be appointed in a certificate of appointment. The certificate of appointment must be signed by the owners of all of the real property in the district and must contain the signed acceptance of the appointment by all of the directors.

(3) The board of directors is the governing body of the district.

~~(4) When an appointed director's term expires, the position must be filled by election, except as provided in subsection (2).~~"

Section 2. Section 7-13-2232, MCA, is amended to read:

"**7-13-2232. Composition of board of directors.** (1) ~~If there are no municipalities within the boundaries of said district, the~~ *Except as provided in subsection (4), the* board of directors ~~shall~~ *must* consist of five *elected* members or three *elected* members if there are 10 or ~~less~~ *fewer* qualified electors in the district.

(2) ~~In all cases where the boundaries of such district include any municipality or municipalities, said board, in addition to said five or three directors to be elected as aforesaid, shall consist of one additional director for each of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed, and, if there be any unincorporated territory within said district, one additional director to be appointed by the board of county commissioners of each county containing such territory.~~ *If the boundaries of the district include a municipality, the board may include one additional nonvoting ex officio member as provided in [section 3] for each municipality located within the district. Each nonvoting ex officio member must be appointed by the mayor of the municipality for which the nonvoting ex officio member is allowed.*

(3) If the boundaries of the district include unincorporated territory, the board may include one additional nonvoting ex officio member as provided in [section 3] appointed by the board of county commissioners of each county containing the unincorporated territory.

(4) (a) If a municipal water system functions as the sole source of water for a district and if more than 60% of a district's customers reside within the limits

of the municipality, the board of directors must include one additional member appointed by the municipality.

(b) The member appointed pursuant to this subsection (4):

(i) must have knowledge of the municipal water system;

(ii) must be appointed in the manner provided in 7-13-2259, except that the appointment must also be approved by the city council;

(iii) serves at the pleasure of the appointing authority; and

(iv) serves the term of office provided in 7-13-2234."

Section 3. Nonvoting ex officio members -- requirements -- compensation. (1) A district whose boundaries include a municipality or unincorporated territory may include on its board of directors a nonvoting ex officio member or members as allowed in 7-13-2232.

(2) A nonvoting ex officio member:

(a) must be appointed by the mayor of the municipality or by the board of county commissioners of the county the member represents;

(b) serves at the pleasure of the appointing authority for the term of office allowed in 7-13-2234;

(c) is not entitled to compensation under 7-13-2273 but may receive compensation from the municipality or county the member represents;

(d) may not hold office as a presiding officer of the district; and

(e) is required to meet the qualifications of a director provided in 7-13-2233 except that the nonvoting ex officio member may reside outside the boundaries of the district and is not required to own property in the district.

Section 4. Section 7-13-2233, MCA, is amended to read:

"**7-13-2233. Qualifications of directors.** (1) To be eligible for election or appointment to a board of directors, a person must be:

(a) registered to vote as required by law;

(b) 18 years of age or older;

(c) a citizen of the United States; and

(d) a resident of the district or an owner of real property in the district who is a resident of the state of Montana.

~~(2) A person who is serving on a board of directors on July 1, 2017, who does not meet the qualifications under subsection (1) may serve the remainder of the person's term but may not be reelected or reappointed to the board. A person elected or appointed after July 1, 2017, must meet the qualifications under subsection (1).~~

(2) A person appointed to a board of directors as a nonvoting ex officio member as provided in [section 3] must meet the requirements of this section except that the person may reside outside the boundaries of the district and is not required to own property in the district.

(3) A person appointed by a municipality to a board of directors pursuant to 7-13-2232(4) must have knowledge of the municipal water system."

Section 5. Section 7-13-2234, MCA, is amended to read:

"**7-13-2234. Term of office.** (1) *The term of office of a director begins on the first Monday of the month following the date of the director's election or appointment.* A director, elected or appointed, shall hold office until the ~~election and qualification or the appointment and qualification of the~~ *term of office of the* director's successor *begins*.

(2) Except as provided in subsection (3), the term of office of a director must be 4 years.

(3) (a) In districts requiring the election of five directors, three of the initial directors shall serve for a term of 2 years and two of the initial directors shall serve for a term of 4 years.

(b) In districts requiring the election of three directors, one initial director shall serve for a term of 2 years and two initial directors shall serve for a term of 4 years.

(c) At the first meeting following an initial election or appointment of directors, the directors shall determine by lot who shall serve a 2-year term.

(4) Directors to be first appointed under the provisions of *part 23 and* this part ~~and part 23~~ must be appointed within 90 days after the formation of the district."

Section 6. Section 7-13-2259, MCA, is amended to read:

"**7-13-2259. Manner of making appointments.** The mode of appointment of *a* director*,* ~~or directors~~ *including the appointment of a nonvoting ex officio board member,* by a mayor or by a board of county commissioners ~~shall~~ *must* be by certificate of appointment signed by ~~said~~ *the* mayor or issued by ~~said~~ *the* board of county commissioners and transmitted to the board of directors of ~~said~~ *the* district."

Section 7. Section 7-13-2262, MCA, is amended to read:

"**7-13-2262. Vacancies on board of directors -- appointment.** (1) (a) Except as provided in subsections (2) ~~and (3)~~ *through (4)*, any vacancy in the board of directors, whether the vacant office is elective or appointive, must be filled by majority vote of the remaining directors.

(b) A vacancy must be determined in accordance with 7-13-2263.

(2) If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.

~~(3) If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (2), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.~~

~~(4)~~*(3)* Following the appointment of a board in accordance with subsection (2), the directors must be elected as provided in this part.

(4) A vacancy of a nonvoting ex officio board member or a board member appointed by a municipality pursuant to 7-13-2232(4) must be filled by appointment by the respective appointing authority."

Section 8. Repealer. The following section of the Montana Code Annotated is repealed:

7-13-2279. Performance bonds for administrative personnel.

Section 9. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 7, chapter 13, part 22, and the provisions of Title 7, chapter 13, part 22, apply to [section 3].

Section 10. Effective date. [This act] is effective on passage and approval.

Approved May 18, 2023

CHAPTER NO. 594

[HB 19]

AN ACT GENERALLY REVISING LAWS RELATED TO INDIAN AFFAIRS; CLARIFYING THE DUTIES OF STATE DIRECTOR OF INDIAN AFFAIRS; MODIFYING THE REQUIREMENTS OF THE DEPARTMENT OF

COMMERCE AND THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION RELATED TO ASSESSMENTS AND REPORTS OF THE ECONOMIC ACTIVITY OF TRIBES IN MONTANA; REMOVING STATUTORY REFERENCES TO THE POSITIONS OF TRIBAL BUSINESS CENTER COORDINATOR AND FEDERAL GRANTS COORDINATOR IN THE OFFICE OF THE STATE DIRECTOR OF INDIAN AFFAIRS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 2-15-217, 90-1-105, 90-1-132, 90-1-134, 90-1-135, 90-11-101, AND 90-11-102, MCA; REPEALING SECTION 90-1-133, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-15-217, MCA, is amended to read:

"**2-15-217. Office of state director of Indian affairs.** (1) There is an office of state director of Indian affairs. The office is allocated to the governor's office for administrative purposes only as prescribed in 2-15-121.

(2) The state director must be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state. The state director shall serve at the pleasure of the governor.

(3) Except as provided in subsection (4), the qualifications for applicants must include but are not limited to:

(a) a bachelor's degree in a relevant public policy field, as determined by the governor;

(b) not less than 3 years experience in a professional administrative capacity; and

(c) demonstrated skills in conducting policy research and obtaining grant funds from federal, state, or private sector sources.

(4) The governor may appoint an applicant agreed upon by the tribal councils as provided in subsection (2) whose skills and experience are commensurate with the qualifications set forth in subsection (3).

(5) The state director of Indian affairs shall carry out the legislative policy set forth in 90-11-101 and perform the duties assigned under 90-11-102."

Section 2. Section 90-1-105, MCA, is amended to read:

"**90-1-105. Functions of department of commerce -- economic development.** The department of commerce shall:

(1) provide coordinating services to aid state and local groups and Indian tribal governments in the promotion of new economic enterprises and conduct publicity and promotional activities within the state, nationally, and internationally in connection with new economic enterprises;

(2) collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) serve as an official state liaison between persons interested in locating new economic enterprises in Montana and state and local groups and Indian tribal governments seeking new enterprises;

(4) aid communities and Indian tribal governments interested in obtaining new business or expanding existing business;

(5) (a) study and promote means of expanding markets for Montana products within the state, nationally, and globally; and

(b) provide training and assistance for Montana small businesses and entrepreneurs to expand markets for made-in-Montana products;

(6) encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state;

(7) ~~starting in 2020, publish a decennial report, to be authored by the bureau of business and economic research at the university of Montana, on the economic contributions and impacts of Indian reservations in Montana based on federal, state, local, tribal, and private inputs. Copies of the report must be provided to the governor, each tribal government in Montana, the state-tribal economic development commission, and the state-tribal relations committee in accordance with 5-11-210, and the report must be published on the department's website~~ *in collaboration with the state-tribal economic development commission, tribal governments, and other partners, develop a system for the gathering of data allowing the department to quantify on an ongoing basis the economic contributions of the tribes in Montana. The department may execute data sharing and use agreements with each tribal government. The department shall update the state-tribal relations committee on this effort and, beginning no later than December 1, 2024, and in a manner beneficial to tribal governments, policymakers, and the public, make aggregate data on the economic contributions of the tribes in Montana readily available on an ongoing basis. Disaggregated data provided by a tribal government pursuant to a data sharing and use agreement with the department and identified by the tribal government as confidential must be considered "confidential information" as defined in 2-6-1002(1)(d). The department may accept contributions and donations from individuals and organizations for the purposes of this subsection.*

(8) explore the use of cooperative agreements, as provided in Title 18, chapter 11, part 1, for the promotion and enhancement of economic opportunities on the Indian reservations in Montana; and

(9) assist the state-tribal economic development commission established in 90-1-131 in:

(a) identifying federal government and private sector funding sources for economic development on Indian reservations in Montana; and

(b) fostering and providing assistance to prepare, develop, and implement cooperative agreements, in accordance with Title 18, chapter 11, part 1, with each of the tribal governments in Montana."

Section 3. Section 90-1-132, MCA, is amended to read:

"**90-1-132. Commission purposes -- duties and responsibilities.** (1) The general purposes of the state-tribal economic development commission include:

(a) assisting, promoting, encouraging, developing, and advancing economic prosperity and employment on Indian reservations in Montana by fostering the expansion of business, manufacturing, tourism, agriculture, and community development programs;

(b) cooperating and acting in conjunction with other organizations, public and private, to benefit tribal communities;

(c) recruiting business enterprises to locate on or invest in enterprises on the reservations; and

(d) identifying, obtaining, and coordinating federal, state, and private sector gifts, grants, loans, and donations to further economic development on the Indian reservations in Montana.

(2) The state-tribal economic development commission shall:

(a) in conjunction with the tourism advisory council provided for in 2-15-1816, oversee use of proceeds to expand tourism activities and visitation in the Indian tourism region;

(b) determine~~, with assistance from the tribal business center coordinator and the federal grants coordinator in the office of the state director of Indian affairs~~, the availability of federal, state, and private sector gifts, grants,

loans, and donations to tribal governments, Indian business enterprises, and communities located on Indian reservations in Montana;

(c) apply for grants listed in the Catalog of Federal Domestic Assistance for which the commission is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;

(d) in cooperation with a tribal government, and when allowed by federal law and regulation, assist the tribe in applying for grants listed in the Catalog of Federal Domestic Assistance for which an appropriate tribal entity is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;

(e) evaluate the apportionment of current spending of federal funds by state agencies in areas including but not limited to economic development, housing, community infrastructure, business finance, tourism promotion, transportation, and agriculture;

~~(f) conduct or commission and oversee a comprehensive assessment of the economic development needs and priorities of each Indian reservation in the state;~~

~~(g)~~*(f)* notify tribal governments, the governor, the state director of Indian affairs, and the directors of the departments of commerce, agriculture, and transportation, of the availability of specific federal, state, or private sector funding programs or opportunities that would directly benefit Indian communities in Montana;

~~(h)~~*(g)* assist tribal governments and other tribal entities that are eligible for federal assistance programs as provided in the most recent published edition in the Catalog of Federal Domestic Assistance in applying for funds that would contribute to the respective tribes' economic development;

~~(i)~~*(h)* work cooperatively with tribal government officials, the state director of Indian affairs, and other appropriate state officials to help foster state-tribal cooperative agreements pursuant to Title 18, chapter 11, part 1, that will:

(i) enhance economic development on the Indian reservations in Montana; and

(ii) help the department of commerce to fully implement and comply with the provisions of 90-1-105; and

~~(j)~~*(i)* provide to the governor, the legislative council, the state-tribal relations committee, the legislative auditor, and to each of the presiding officers of the tribal governments in Montana a biennial report in accordance with 5-11-210 that summarizes the activities of the commission."

Section 4. Section 90-1-134, MCA, is amended to read:

"**90-1-134. No waiver of tribal sovereignty.** Sections *90-1-105 and* 90-1-132 ~~and 90-1-133~~ do not constitute or imply any waiver of sovereignty on the part of any of the federally recognized tribes in Montana."

Section 5. Section 90-1-135, MCA, is amended to read:

"**90-1-135. Special revenue accounts.** (1) There is a state special revenue account in the state treasury for the receipt of state and private funds and a federal special revenue account in the state treasury for the receipt of federal funds for expenditure by the state-tribal economic development commission established in 90-1-131.

(2) Money in the state special revenue account from proceeds distributed under 15-65-121~~(2)(g)~~ *and 15-68-820* is to be used for activities for the Indian tourism region, defined in 15-65-101.

(3) Except as provided in subsection (2), money in the accounts established in subsection (1) must be used to pay~~:~~

~~(a)~~ the commission's administrative costs~~;~~

~~(b) the salary, benefits, and administrative expenses of the tribal business center coordinator and the federal grants coordinator; and~~

~~(c) the costs of conducting or commissioning and periodically updating or otherwise modifying a comprehensive assessment of economic development needs and priorities on each of the Indian reservations in the state~~.

(4) Money in the accounts that is not expended for the purposes identified in subsection (2) or (3) may be used for other purposes that the commission considers prudent or necessary.

(5) Interest and income earned on the money in the accounts must be deposited in the accounts for the commission's use."

Section 6. Section 90-11-101, MCA, is amended to read:

"**90-11-101. Legislative policy.** The legislature finds and declares that:

(1) a considerable portion of the citizens of the state of Montana are American Indians;

(2) since statehood, Indian citizens of the state of Montana have lived on reservations set apart for those purposes by the United States of America, and by virtue of their isolation and supervision by the federal government, great problems of economic and social significance have arisen and presently exist;

(3) the best interests of Montana Indian tribes will be served by engaging in government-to-government relationships designed to recognize the rights, duties, and privileges of full citizenship that Indians are entitled to as citizens of this state;

(4) because the tribes are domestic dependent nations, agencies of the federal government retain jurisdiction and a fiduciary duty throughout the state of Montana for the administration of economic, social, health, education, and welfare programs for Indians;

(5) unique differences exist between the tribes, their reservations, customs, and treaties, and their respective relationships with the federal government, all of which influence the relationships among tribes and between the tribes and the state;

(6) there are sizeable numbers of off-reservation enrolled and unenrolled Indians residing in our state whose needs for social, environmental, educational, and economic assistance are borne in part by state and local agencies;

(7) programs of the state of Montana should not duplicate those supported by agencies of the federal government or tribal governments with regard to jurisdiction of Indian people, because state responsibility includes off-reservation Indians and because those Indians require assistance to coordinate their affairs with various tribal groups and federal agencies where they have no official recognition;

(8) the state and the tribes working together in a government-to-government relationship and engaging in compacts and other cooperative agreements for the benefit of Indian and non-Indian residents will promote economic development, environmental protection, education, social services support, and enduring good will;

(9) to facilitate the discussion and resolution of issues and concerns that Indian tribes have in relation to the state, the federal government, and among themselves, the state director of Indian affairs*, established in 2-15-217,* shall:

(a) maintain effective tribal-state communications;

(b) assess tribal and individual Indian concerns and interests to seek ways and means of communicating these concerns and interests to relevant state agencies and to the legislature and actively assist in organizing these efforts; and

(c) act as a liaison for tribes and Indian people, whether the Indian people reside on or off reservations, whenever assistance is required;

(10) the state director of Indian affairs shall endeavor to assist tribes to seek agreements between the state and tribes and to work toward a consensus among the tribes and other parties on shared goals and principles."

Section 7. Section 90-11-102, MCA, is amended to read:

"**90-11-102. Duties and assistance.** (1) It is the duty of the state director of Indian affairs*, established in 2-15-217,* to carry out the legislative policy set forth in 90-11-101.

(2) The state director shall:

(a) meet at least quarterly with tribal governments and become acquainted with the problems confronting the Indians of Montana;

(b) meet with executive branch directors on issues arising between Montana's Indian citizens, tribes, and state agency personnel and programs;

(c) report to the governor's cabinet meeting concerning issues confronting Indian people and tribal governments;

(d) advise the legislative and executive branches of the state of Montana of those problems and issues;

(e) make recommendations for the alleviation of those problems and issues;

(f) serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs;

(g) act as a liaison for representative Indian organizations and groups, public and private, whenever the state director's support is solicited by tribal governmental entities;

(h) serve on the state-tribal economic development commission established in 90-1-131; *and*

(i) report in detail at every meeting of the state-tribal relations committee those actions taken by the state-tribal economic development commission established by 90-1-131 to carry out its duties~~; and~~

~~(j) hire, with the concurrence of the other members of the state-tribal economic development commission, a tribal business center coordinator and a federal grants coordinator, and subsequently provide administrative support for both positions~~.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting assistance on any matter relating to education, health, natural resources, and economic development on Indian reservation lands."

Section 8. Repealer. The following section of the Montana Code Annotated is repealed:

90-1-133. Comprehensive assessment on reservations.

Section 9. Appropriation. There is appropriated $1 from the general fund to the department of commerce for the biennium beginning July 1, 2023, for the purpose of developing the data system to quantify on an ongoing basis the economic contributions of the tribes in Montana pursuant to 90-1-105.

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 11. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 595

[HB 11]

AN ACT APPROPRIATING MONEY FROM THE MONTANA COAL ENDOWMENT SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF COMMERCE FOR INFRASTRUCTURE PROJECTS, EMERGENCY GRANTS FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS, AND INFRASTRUCTURE PLANNING GRANTS; AUTHORIZING GRANTS FROM THE MONTANA COAL ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS ON GRANTS AND FUNDS; APPROPRIATING MONEY FROM THE MONTANA COAL ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER SYSTEM PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation for Montana coal endowment program grants. (1) There is appropriated $23,843,500 from the Montana coal endowment special revenue account established in 17-5-703(3)(a) to the department of commerce for the biennium beginning July 1, 2023, to finance Montana coal endowment program grants authorized by subsection (2).

(2) The following applicants and projects are authorized for grants and are listed in the order of their priority:

Infrastructure Applicant (project type)	Grant Amount
1. Cascade, Town of (wastewater)	$625,000
2. Havre, City of (water)	$500,000
3. Dodson, Town of (water)	$500,000
4. Thompson Falls, City of (water)	$750,000
5. Twin Bridges, Town of (water)	$750,000
6. Dutton, Town of (water)	$625,000
7. Geraldine, Town of (water)	$500,000
8. Wolf Point, City of (wastewater)	$625,000
9. Forsyth, City of (water)	$500,000
10. Saco, Town of (wastewater)	$500,000
11. Troy, City of (water)	$750,000
12. Choteau, City of (water)	$625,000
13. Craig County Water & Sewer District (wastewater)	$400,000
14. Red Lodge, City of (wastewater)	$500,000
15. Superior, Town of (wastewater)	$750,000
16. Libby, City of (wastewater)	$460,000
17. Corvallis Sewer District (wastewater)	$500,000
18. Shelby, City of (wastewater)	$444,500
19. Hot Springs, Town of (wastewater)	$750,000
20. Hideaway Community Co. Water Sewer District (wastewater)	$750,000
21. Belt, Town of (water)	$500,000
22. Bigfork Water & Sewer District (wastewater)	$500,000
23. Martinsdale Water & Sewer (water)	$750,000
24. Victor Water Sewer District (wastewater)	$500,000
25. Cooke Pass, Cooke City, Silvergate Co. Sewer District (wastewater)	$750,000
26. Absarokee Water & Sewer District (water)	$500,000

27. Boulder, City of (water)	$500,000
28. Richey, Town of (water)	$500,000
29. Circle, Town of (water)	$625,000
30. Kalispell, City of (water/wastewater)	$750,000
31. Lockwood Water & Sewer District (water)	$750,000
32. Philipsburg, Town of (water)	$625,000
33. Chester, Town of (wastewater)	$500,000
34. Hingham, Town of (wastewater)	$750,000
35. Black Eagle-Cascade Co. Water & Sewer District (wastewater)	$414,000
36. Denton, Town of (wastewater)	$500,000
37. Drummond, Town of (wastewater)	$500,000
38. Gallatin Canyon County Water & Sewer District (wastewater)	$750,000
39. Townsend, City of (water)	$750,000
40. Sunburst, Town of (wastewater)	$625,000

(3) There is appropriated $6,366,213 from the Montana coal endowment special revenue account established in 17-5-703(3)(a) to the department of commerce for the biennium beginning July 1, 2023, to finance Montana coal endowment program grants authorized by subsection (4).

(4) The following applicants and projects are authorized for grants and are listed in the order of their priority:

Bridge Applicant	Grant Amount
1. Beaverhead County	$750,000
2. Yellowstone County	$750,000
3. Lewis & Clark County	$379,930
4. Big Horn County	$500,000
5. Park County	$299,622
6. Gallatin County	$750,000
7. Broadwater County	$750,000
8. Petroleum County	$465,300
9. Wibaux County	$691,350
10. Madison County	$499,461
11. Stillwater County	$340,550
12. Town of Drummond	$190,000

(5) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsections (2) and (4) for the purposes of encumbering the funds in the Montana coal endowment special revenue account established in 17-5-703(3)(a) for the biennium beginning July 1, 2023, pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(6) Any of the projects listed in subsections (2) and (4) that have not completed the conditions described in [section 3(1)] by September 1, 2024, must be reviewed by the next regular legislature to determine if the authorized grant should be withdrawn.

(7) The funds appropriated in this section must be used by the department to make grants to the government entities listed in subsections (2) and (4) for the described purposes and in amounts not to exceed the amounts set out in subsections (2) and (4). The grants authorized in this section are subject to the conditions set forth in [section 3(1)] and described in the Montana coal endowment program 2025 biennium project funding recommendations to the 68th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsections (2) and (4). The department shall commit

funds to projects listed in subsections (2) and (4), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until the funds deposited in the Montana coal endowment special revenue account established in 17-5-703(3)(a) during the biennium beginning July 1, 2023, are expended.

(8) The award contract with a grantee must require the grantee to post the following statement on its homepage website, promotional materials, and publications: "We are funded in part by coal severance taxes paid based upon coal mined in Montana and deposited in the Montana coal endowment special revenue account."

(9) Grant recipients shall complete all of the conditions described in [section 3(1)] by September 30, 2026, or any obligation to the grant recipient will cease.

Section 2. Approval of grants -- completion of biennial appropriation. (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(2) and (4)], the emergency infrastructure grants in [section 5], and the infrastructure planning grants in [section 6].

(2) The authorization of these grants completes a biennial appropriation from the Montana coal endowment special revenue account established in 17-5-703(3)(a).

(3) Grants to entities from prior biennia are reauthorized for completion of contract work.

Section 3. Condition of grants -- disbursements of funds. (1) The disbursement of grant funds for the projects specified in [section 1(2) and (4)] is subject to completion of the following conditions:

(a) The grant must document that other matching funds required for completion of the project are firmly committed.

(b) The grant recipient must have a project management plan that is approved by the department of commerce.

(c) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in 2 CFR 200.

(d) The grant recipient shall satisfactorily comply with any conditions described in the application's project summaries section of the Montana coal endowment program 2025 biennium project funding recommendations to the 68th legislature.

(e) The grant recipient shall satisfy other specific requirements considered necessary by the department of commerce to accomplish the purpose of the project as evidenced by the application to the department.

(f) Pursuant to 90-6-710(6), the grant recipient shall comply with all Montana coal endowment program requirements as determined by the department of commerce in order to qualify for reimbursement of project expenses.

(g) The grant recipient shall execute a grant agreement with the department of commerce.

(2) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of Montana coal endowment program funds that are not subject to the department of environmental quality design standards shall adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River board of state and provincial public health and environmental managers, latest edition.

(3) Recipients of Montana coal endowment program funds are subject to the requirements of the department of commerce as described in the most recent

edition of the Montana Coal Endowment Program Project Administration Manual adopted by the department through the administrative rulemaking process.

Section 4. Other powers and duties of department. (1) The department of commerce shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion:

(a) reduce the amount of grant funds to be provided to grant recipients in proportion to all other project funding sources; or

(b) reduce the amount of grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(3) If the grant recipient obtains a greater amount of grant funds than was contained in the Montana coal endowment program application, the department may reduce the amount of the Montana coal endowment program grant funds to be provided to ensure that the grant recipient continues to meet the threshold requirements contained in the program guidelines for receiving the larger Montana coal endowment program grant.

Section 5. Appropriation from Montana coal endowment special revenue account for emergency grants. There is appropriated $100,000 from the Montana coal endowment special revenue account to the department of commerce for the biennium beginning July 1, 2023, for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

Section 6 Appropriation from Montana coal endowment special revenue account for infrastructure planning grants. There is appropriated $900,000 from the Montana coal endowment special revenue account to the department of commerce for the biennium beginning July 1, 2023, for the purpose of providing local governments, as defined in 90-6-701, with the infrastructure planning grants for infrastructure projects, as defined in 90-6-701.

Section 7. Appropriation from Montana coal endowment regional water system special revenue account. (1) There is appropriated $10 million from the Montana coal endowment regional water system special revenue account to the department of natural resources and conservation for the biennium beginning July 1, 2023, to finance the state's share of regional water system projects authorized in subsection (2) and as set forth in 90-6-715.

(2) The state's four regional water authorities are authorized to receive the funds appropriated in subsection (1) as long as there are sufficient funds available from the amount that was deposited in the Montana coal endowment regional water system special revenue account during the biennium beginning July 1, 2023.

(3) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 9(1)].

(4) This section constitutes a valid obligation of funds to the regional water authorities identified in subsection (2) for the purposes of encumbering the funds in the Montana coal endowment regional water system special revenue account received during the biennium beginning July 1, 2023, under 17-7-302.

Section 8. Approval of funds -- completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 7(2)].

(2) The authorization of these funds completes an appropriation from the Montana coal endowment regional water system special revenue account provided for in 17-5-703(3)(b).

Section 9. Conditions -- manner of disbursement of funds. (1) The disbursement of funds under [sections 7 and 8] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 11. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 596

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation of cultural and aesthetic grant funds -- priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2] and this section.

(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 $30,000 from the cultural and aesthetic projects trust fund account to the Montana historical society for the biennium ending June 30, 2025, for the care and conservation of capitol complex artwork.

Section 2. Appropriation of cultural and aesthetic grant funds. The following projects are approved, and $558,876 is appropriated from the cultural and aesthetic projects trust fund account to the Montana arts council for the biennium ending June 30, 2025:

Grant #	Grantee	Award Amount
Special Projects		
2407	Preserve Montana (Formerly Montana Preservation Alliance)	$10,000
2406	Montana Historical Society	$9,000
2402	Butte-Silver Bow Public Archives	$6,500

2401 Billings Preservation Society	$7,000
2405 Lewistown Art Center	$9,450
2404 Emerson Center for the Arts & Culture	$10,000
2409 Upper Swan Valley Historical Society, Inc.	$4,000
2408 Support Local Artists and Musicians (S.L.A.M.)	$10,000
2403 City County Preservation Committee Operating Support	$5,000
2445 Montana Shakespeare in the Parks	$10,000
2431 Humanities Montana	$10,000
2436 MCT, Inc.	$10,000
2430 Holter Museum of Art	$10,000
2435 MAPS Media Institute (Formerly Irwin & Florence Rosten Fnd)	$10,000
2423 Cohesion Dance Project	$5,000
2459 Western Heritage Center	$10,000
2434 Mai Wah Society Museum	$6,749
2429 Hockaday Museum of Art	$10,000
2411 Alpine Artisans, Inc.	$6,000
2453 Sunburst Arts and Education	$6,000
2439 MonDak Heritage Center	$10,000
2413 Art Mobile of Montana	$10,000
2454 The Myrna Loy	$10,000
2415 Billings Symphony Society	$10,000
2451 Schoolhouse History Art Center	$10,000
2458 WaterWorks Art Museum	$10,000
2438 Missoula Writing Collaborative	$8,000
2442 Montana Dance Arts Association	$5,000
2412 Archie Bray Foundation	$10,000
2414 Billings Cultural Partners	$4,500
2452 Stillwater Historical Society	$8,000
2424 Glacier Symphony and Chorale	$10,000
2410 Alberta Bair Theater	$10,000
2450 Pondera Arts Council	$4,000
2433 Montana Art Gallery Directors Association (MAGDA)	$8,000
2443 Montana Performing Arts Consortium	$10,000
2457 Verge Theater	$10,000
2449 Paris Gibson Square Museum of Art	$10,000
2444 Montana Repertory Theatre, University of Montana	$10,000
2421 Carbon County Arts Guild & Depot Gallery	$10,000
2432 Intermountain Opera Association	$10,000
2456 The Roxy Theater (Formerly International Wildlife Film Festival)	$4,000
2418 Butte Citizens for Preservation and Revitalization	$4,500
2437 Missoula Symphony Association	$10,000
2441 Montana Ballet Company	$10,000
2417 Bozeman Symphony Society	$10,000
2455 The Paradise Center	$7,000
2425 Grandstreet Broadwater Productions, Inc.	$10,000
2461 Whitefish Theatre Co	$10,000
2427 Hamilton Players, Inc	$10,000
2440 Montana Association of Symphony Orchestras	$10,000
2422 Carbon County Historical Society	$7,500
2416 Bozeman Art Museum	$10,000

2428 Helena Symphony	$10,000
2462 Zootown Arts Community Center	$10,000
2420 C.M. Russell Museum	$10,000
2419 Butte Symphony Association	$10,000
2448 North Valley Music School	$9,000
2447 Museums Association of Montana	$10,000
2426 Great Falls Symphony	$10,000
2446 Montana State Firefighters Memorial	$6,000
2460 Whitefish Review, Inc. Capital Expenditures	$10,000
2463 Friends of the Historical Museum at Fort Missoula	$3,677
2464 Red Lodge Area Community Foundation	$5,000
2465 Yellowstone Art Museum $	10,000

Section 3. Reversion of grant money. On July 1, 2025, the unencumbered balance of the grants for the biennium ending June 30, 2025, reverts to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

Section 4. Changes to grants on pro rata basis. Except for the appropriation provided for in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels provided 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, 2023.

Approved May 18, 2023

CHAPTER NO. 597

[HB 7]

AN ACT IMPLEMENTING THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriations for reclamation and development grants. (1) There is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to $2,000,000 for grants for planning reclamation and development projects to be awarded by the department over the course of the biennium beginning July 1, 2023.

(2) The amount of $3,653,347 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 for grants to political subdivisions and local governments during the biennium beginning July 1, 2023. The funds in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts set out in subsection (4) subject to the conditions set forth in [sections 2 and 3] and the contingencies described in the reclamation and development grants program report to the 68th legislature titled: "Governor's Executive Budget Fiscal Years 2023 - 2025 Volume 5".

(3) Funds must be awarded up to the amounts approved in this section in the order of priority listed in subsection (4) until available funds are expended.

Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. After all eligible projects are funded, remaining funds may be used for any reclamation and development project authorized under this section.

(4) The following are the prioritized grant projects:

Applicant/Project	Amount
Beaverhead Conservation District	
Grasshopper Creek Mine Tailings Stream Bank Stabilization	$419,180
DNRC - State Water Projects Bureau	
Willow Creek Dam Rehabilitation Project	$500,000
DNRC - State Water Projects Bureau	
East Fork of Rock Creek Dam Rehabilitation	$500,000
Chester, Town of	
Chester Motors Petroleum Cleanup	$300,000
Black Eagle-Cascade County Water and Sewer District	
Black Eagle Sewer System Improvements 2023	$125,000
Harlowton, City of	
Asbestos Removal, Cleanup, and Restoration of Contaminated Soils at Harlowton Roundhouse	$500,000
Deer Lodge, City of	
Milwaukee Roundhouse Site Passenger Refueling Area Remediation	$342,500
Philipsburg, Town of	
Philipsburg Wastewater Project	$316,667
Cascade Conservation District	
Muddy Creek Restoration and Resilience Project	$500,000
DNRC - Water Management Bureau	
Expansion of Water Resources Division Hydrology Data Portal	$150,000

Section 2. Coordination of fund sources for grants to political subdivisions and local governments. A project sponsor listed under [section 1(4)] may not receive funds from both the reclamation and development grants program and the renewable resource grant and loan program for the same project during the same biennium.

Section 3. Conditions of grants. Disbursement of funds under [section 1] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work, schedule, and budget for the project must be approved by the department of natural resources and conservation. Any changes in scope of work or budget subsequent to legislative approval may not change project goals and objectives. Changes in activities that would reduce the public or natural resource benefits as presented in department of natural resources and conservation reports and applicant testimony to the 68th legislature may result in a proportional reduction in the grant amount.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the program report to the legislature for the biennium ending June 30, 2025, or, in the case of planning grants issued under [section 1(1)], completion of conditions specified at the time of written notification of approved grant authority.

(3) The project sponsor must have a fully executed grant agreement with the department.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal as presented to the legislature.

Section 4. Other appropriations. There is appropriated to any entity of state government that receives a grant under [section 1] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to entities from prior bienniums are reauthorized for completion of contract work.

Section 5. Approval of grants -- completion of biennial appropriation. The legislature, pursuant to 90-2-1111, approves the reclamation and development grants listed in [section 1]. The authorization of these grants constitutes a biennial appropriation from the natural resources projects state special revenue account established in 15-38-302.

Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 7. Coordination instruction. (1) If both [this act] and an act that provides additional funding for reclamation and development grants from a source other than the natural resources projects state special revenue account established in 15-38-302 are passed and approved, the projects listed in [section 1(4) of this act] that do not receive funding from the appropriations in [section 1(2) of this act] may receive funding from the appropriation in the other act designated for reclamation and development grants in the order of completion of the conditions of [section 3 of this act] and to the extent that there is appropriation authority available.

(2) If both [section 1(1) of this act] and [section 1(1)(b) of House Bill No. 6] are passed and approved and if all of the $2,000,000 in grant funds authorized in [section 1(1) of this act] are not expended for planning reclamation and development projects by the end of the biennium, then projects eligible for funding under [section 1(1)(b) of House Bill No. 6] are eligible to apply for funding under [section 1(1) of this act] for renewable resource project planning grants.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 598

[HB 297]

AN ACT REVISING VIDEO GAMBLING MACHINE TAXES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 23-5-602 AND 23-5-610, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 23-5-602, MCA, is amended to read:

"**23-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Aggregate gross income" means the sum total of the gross income of all video gambling machines owned by a licensed machine owner.

~~(1)~~*(2)* "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly,

printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

~~(2)~~*(3)* "Automated accounting and reporting system" means a system that, at a minimum, is used to electronically report video gambling machine accounting data to the state.

~~(3)~~*(4)* (a) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(4)~~*(5)* (a) "Bonus game" means a game other than a bingo, poker, keno, or video line game that is offered as a prize for playing and achieving a defined outcome by playing a bingo, poker, keno, or video line game. The term includes a game that allows a player to win free credits, free games, or a multiplier of credits already won or to move to an accelerated pay table for the play of a bingo, poker, keno, or video line game. A bonus game must make available to the player a display of the rules for the bonus game.

(b) The term does not include a game that allows the player to wager money or credits on the game or to lose money or credits already won. The term does not include a game by which the bonus game would become the predominant game rather than a bingo, poker, keno, or video line game. The department shall by administrative rule define the conditions that would cause a bonus game to be the predominant game. The term does not include a game that displays or simulates a gambling activity that is not legal under state law.

~~(5)~~*(6)* "Electronically captured data" means video gambling machine accounting information and records of video gambling machine events, in electronic form, that are automatically recorded and communicated to the department through an approved automated accounting and reporting system.

~~(6)~~*(7)* "Gross income" means money put into a video gambling machine minus credits paid out in cash. *Gross income may be either a negative or a positive value.*

~~(7)~~*(8)* (a) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(8)~~*(9)* "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

~~(9)~~*(10)* "Multigame" means a combination of at least two or more approved types of games, including bingo, poker, keno, or video line games, within the same video gambling machine cabinet if the video gambling machine cabinet has been approved by the department.

~~(10)~~*(11)* "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department.

~~(11)~~*(12)* "Player rewards system" means a system that rewards player loyalty, including but not limited to employing player rankings, awarding player points, or other promotions based on player engagement at an individual licensed premises as determined by using video gambling machine data, which

may come from an automated accounting and reporting system, and other information gathered at an individual licensed premises.

~~(12)~~*(13)* (a) "Poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, 5-card stud, 7-card stud, or hold 'em, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(13)~~*(14)* (a) "Video line game" means a video line game as defined by rules of the department and approved by the department. A video line game uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash. Video line games may be offered only in a multigame video gambling machine cabinet.

(b) The term does not include a game played on a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value."

Section 2. Section 23-5-610, MCA, is amended to read:

"**23-5-610. Video gambling machine gross income tax -- records -- distribution -- ~~quarterly statement and~~ payment.** (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the *aggregate* gross income from ~~each~~ *all* video gambling ~~machine~~ *machines* issued a permit under this part *in the manner prescribed by the department*. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

~~(3) For each video gambling machine issued a permit under this part, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.~~

~~(4)~~*(3)* The department shall, in accordance with the provisions of 17-2-124, forward the tax collected under subsection ~~(3)~~ *(1)* of this section to the state treasurer for deposit in the general fund."

Section 3. Effective date. [This act] is effective July 1, 2023.

Section 4. Applicability. [This act] applies to tax liabilities for calendar quarters beginning after June 30, 2023.

Approved May 18, 2023

CHAPTER NO. 599

[HB 377]

AN ACT ESTABLISHING THE MONTANA 250TH COMMISSION TO COORDINATE STATEWIDE EFFORTS TO CELEBRATE THE UNITED STATES SEMIQUINCENTENNIAL; ESTABLISHING MEMBERSHIP AND DUTIES OF THE COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Montana 250th commission. (1) There is a Montana 250th commission formed to promote civic engagement and increase public awareness of United States and Montana government and history, including the history of tribal nations, leading up to the United States semiquincentennial. The commission is allocated to the Montana historical society for administrative purposes only, as provided in 2-15-121.

(2) The commission consists of the following 11 members:

(a) the Montana historical society director or the director's designee;

(b) two members of the legislature, one from the minority party and one from the majority party appointed as follows:

(i) first, a member of the senate appointed by the president of the senate; and

(ii) second, a member of the house of representatives appointed by the speaker of the house of representatives;

(c) a high school social studies teacher who teaches a course in United States government appointed by the superintendent of public instruction;

(d) a college-level United States history or political science professor appointed by the commissioner of higher education;

(e) a tribal representative appointed by the state director of Indian affairs; and

(f) five members appointed by the governor representing various civic, veteran, military, tourism, history, museum, library, arts, or local and tribal government organizations.

(3) The commission shall:

(a) work with partners, including but not limited to educational institutions, historical preservation entities, civic engagement organizations, tourism, arts, and heritage entities, veteran and military organizations, and local, state, national, and tribal partners;

(b) collaborate with the board of public education, office of public instruction, local schools, and commission partners to:

(i) increase participation in the United States civics test as referenced in 20-7-119;

(ii) increase youth proficiency in United States and Montana government and history and in the distinct and unique heritage of American Indians pursuant to Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5; and

(iii) recognize schools for outstanding achievement in subsections (3)(b)(i) and (3)(b)(ii);

(c) plan, coordinate, and implement an overall program to build public awareness of and foster public participation in celebrating and commemorating the 250th anniversary of the independence and founding of the United States;

(d) draw attention to the achievements, honors, innovations, and significance of the people in this state and recommend ways for this state to commemorate the 250th anniversary of the independence and founding of the United States;

(e) recognize the vibrant indigenous cultures living in this place in 1776;

(f) emphasize the service and sacrifices of veterans who have secured and preserved American independence and freedom; and

(g) celebrate and commemorate events and activities throughout this state.

(4) The commission may and is expected to seek gifts, donations, grants, and other sources of funding to support its activities.

(5) Commission members may not receive compensation but are entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) The education interim committee established in 5-5-224 shall include monitoring of the commission and the commission's efforts in its duties for the 2023 and 2024 interim and may request updates and reports from the commission.

Section 2. Appropriation. There is appropriated $177,557 from the state general fund to the Montana historical society for the biennium beginning July 1, 2023, for the purpose of [section 1]. The appropriation is authorized to continue into the biennium beginning July 1, 2025.

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 22, chapter 3, part 1, and the provisions of Title 22, chapter 3, part 1, apply to [section 1].

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

Section 6. Termination. [This act] terminates December 31, 2026.

Approved May 18, 2023

CHAPTER NO. 600

[HB 302]

AN ACT REQUIRING INSURANCE COVERAGE OF A 12-MONTH SUPPLY OF PRESCRIPTION CONTRACEPTIVES; AMENDING SECTIONS 33-22-101, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Coverage of contraceptives. (1) Each group or individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state that includes coverage for prescription contraceptives must provide reimbursement for up to a 12-month supply of any covered drug, device, or product for contraception that is prescribed and that has been approved by the U.S. food and drug administration.

(2) The coverage under this section must allow the insured to renew and refill a 12-month prescription a minimum of 60 days before the prescription expires.

(3) The coverage under this section must allow the insured to receive the 12-month supply at one time unless the insured requests less than a 12-month supply or a health care provider specifically prescribes less than a 12-month supply.

(4) If the insured's prescriber recommends a specific contraceptive drug, device, or product approved by the U.S. food and drug administration based on medical necessity, the insurer shall defer to the prescriber's determination and provide coverage for the prescribed contraceptive if the prescribed contraceptive drug, device, or product is covered by the insurer.

(5) Coverage required under this section may not:

(a) in the absence of clinical contraindications, impose utilization controls or other forms of medical management to limit the supply of covered contraceptive drugs, devices, or products that will be reimbursed to less than a 12-month supply;

(b) require prior authorization for coverage of prescription contraceptives, except to review the medical necessity of prescribing a 12-month supply of a brand-name contraceptive instead of a 12-month supply of a generic-name contraceptive;

(c) impose a waiting period for the coverage required under this section; or

(d) impose a special deductible, coinsurance, copayment, or other limitation on prescription contraceptives covered under this section that are not generally applicable to other medical care covered under the plan.

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) (a) Sections 33-22-137, 33-22-150 through 33-22-152, *[section 1],* 33-22-170 through 33-22-177, 33-22-180, and 33-22-301 apply to group or blanket policies.

(b) Title 33, chapter 2, part 24, and 33-22-170 through 33-22-177 apply to workers' compensation policies."

Section 3. Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under Title 33, chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, parts 7 and 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Other chapters and provisions of this title apply to health maintenance organizations as follows: Title 33, chapter 1, parts 6, 12, and 13; 33-2-1114; 33-2-1211 and 33-2-1212; Title 33, chapter 2, parts 13, 19, 23, and 24; 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; 33-22-128; 33-22-129; 33-22-131; 33-22-136 through 33-22-139; 33-22-141 and 33-22-142; 33-22-152 and 33-22-153; *[section 1];* 33-22-156 through 33-22-159; 33-22-180; 33-22-244; 33-22-246 and 33-22-247; 33-22-514 and 33-22-515; 33-22-521; 33-22-523 and 33-22-524; 33-22-526; and Title 33, chapter 32."

Section 4. Section 33-35-306, MCA, is amended to read:

"**33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 33-1-111;

(b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(c) Title 33, chapter 1, part 7;

(d) Title 33, chapter 2, parts 23 and 24;

(e) 33-3-308;

(f) Title 33, chapter 7;

(g) Title 33, chapter 18, except 33-18-242;

(h) Title 33, chapter 19;

(i) 33-22-107, 33-22-128, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142, 33-22-152, ~~and~~ 33-22-153*, and [section 1]*;

(j) 33-22-512, 33-22-515, 33-22-525, and 33-22-526;

(k) Title 33, chapter 22, part 7; and

(l) 33-22-707.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Section 6. Effective date. [This act] is effective January 1, 2024.

Section 7. Applicability. [This act] applies to health care policies and plans issued or renewed on or after [the effective date of this act].

Approved May 18, 2023

CHAPTER NO. 601

[HB 305]

AN ACT GENERALLY REVISING ALCOHOL LICENSE LAWS RELATING TO MANUFACTURERS AND RETAILERS; ALLOWING A LIMITED EXCEPTION FOR LICENSED BREWERS, DISTILLERS, AND WINERIES TO HOLD RETAIL LICENSES; ALLOWING A LIMITED EXCEPTION FOR RETAIL LICENSEES TO HOLD A BREWER, DISTILLER, OR WINERY LICENSE; PROVIDING LIMITATIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 16-3-213, 16-3-214, 16-3-241, 16-3-242, 16-3-244, 16-3-311, 16-3-411, 16-4-105, 16-4-201, 16-4-311, 16-4-401, AND 16-4-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 16-3-213, MCA, is amended to read:

"**16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.** (1) Except as provided for small breweries in subsection (2) *and except as provided in 16-4-401(10)*, it is unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

(2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide production of not less than 100 barrels or more than 60,000 barrels, including:

(i) the production of all affiliated manufacturers; and

(ii) beer purchased from any other beer producer to be sold by the brewery.

(b) A small brewery may, at one location for each brewery license and at no more than three locations including affiliated manufacturers, provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day for consumption on the premises or in prepared servings through curbside pickup, provided that the 48-ounce limit may not in any way limit a small brewery's sales as provided in 16-3-214(1)(a)(iii). No more than 2,000 barrels may be provided annually for on-premises *sample room* consumption, including all affiliated manufacturers.

(3) For the purposes of this section, "affiliated manufacturer" means a manufacturer of beer:

(a) that one or more members of the manufacturing entity have more than a majority share interest in or that controls directly or indirectly another beer manufacturing entity;

(b) for which the business operations conducted between or among entities are interrelated or interdependent to the extent that the net income of one entity cannot reasonably be determined without reference to operations of the other entity; or

(c) of which the brand names, products, recipes, merchandise, trade name, trademarks, labels, or logos are identical or nearly identical.

(4) For a licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(10), beer that is manufactured and sold at the colocated premises is not subject to the limitations imposed by this section. Beer manufactured and sold at the colocated premises does count toward production levels for tax purposes."

Section 2. Section 16-3-214, MCA, is amended to read:

"**16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery to:

(i) a wholesaler;

(ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver the beer and if:

(A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day to each licensed retailer; and

(B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a year; or

(iii) the public, including curbside pickup between 8 a.m. and 2 a.m. in original packaging or growlers;

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) A brewery may not use a common carrier for delivery of the brewery's product to the public or to licensed retailers.

(3) A brewery may import or purchase, upon terms and conditions the department may require, necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing purposes.

(4) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

(5) This section does not prohibit a licensed brewer from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230.

(6) For a licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(10), beer that is manufactured and sold at the colocated premises does not count towards the 10,000-barrel self-distribution limit imposed by subsection (1)(a)(ii)(B). Beer manufactured and sold at the colocated premises does count toward production levels for tax purposes."

Section 3. Section 16-3-241, MCA, is amended to read:

"**16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer importers, and wholesalers unlawful -- exceptions.** (1) (a) ~~It~~ *Except as provided in subsection (3), it* is unlawful for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, or any other advertising matter or any other property to a retail licensee, used or to be used in the dispensation of beer in and about the interior of the place of business of the licensed retailer, or to furnish, give, or pay for any repairs, improvements, or painting on or within the premises.

(b) It is lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

(i) bottle openers, can openers, trays, tap handles, menus, apparel, coasters, glassware, cups, napkins, or other functional advertising matter that does not exceed $300 in value in any 1 calendar year to any one retail establishment for display use within the interior of the retail establishment;

(ii) not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each brand of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place of business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture. Any beer advertised must be available for sale on the retailer's premises at the time the displays are used unless the displays are the property of the retailer or, if supplied by a brewer, beer importer, or wholesaler, a display has been in the retailer's possession for more than 9 months.

(iii) permanent or temporary advertising matter of a decorative nature, excluding items described in subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and

(iv) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

(2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of beer to a special permittee or a retailer for use:

(a) in catering an event that is off the permittee's or retailer's regular premises; or

(b) up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours.

(3) A licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(10) is not subject to the limitations of subsection (1)(a) for the licensed brewery's retail-licensed premises."

Section 4. Section 16-3-242, MCA, is amended to read:

"**16-3-242. Financial interest in retailers prohibited.** *(1)* A brewer, beer importer, or wholesaler may not advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax that may be required to be paid for any retailer. A brewer, beer importer, or wholesaler may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler is considered to have a financial interest within the meaning of this section if:

~~(1)~~*(a)* the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against the retailer or the retailer's premises;

~~(2)~~*(b)* the brewer, beer importer, or wholesaler is under any contract with a retailer concerning future purchases or the sale of merchandise by one from or to the other; or

~~(3)~~*(c)* any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler.

(2) A licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(10) is not subject to the limitations of this section for the licensed brewery's retail-licensed premises"

Section 5. Section 16-3-244, MCA, is amended to read:

"**16-3-244. Beer advertising limitations.** ~~It~~ *(1) Except as provided in subsection (2), it* is lawful to advertise beer, as defined and regulated, subject to the restrictions on brewers and beer importers contained in 16-3-241 of this code and subject to the following restrictions on retailers. A retail licensee may

not display or permit to be displayed on the exterior portion or surface of the retailer's place of business or on the exterior portion or surface of any building of which the place of business is a part or on any premises adjacent to the place of business, whether any of the premises are owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer, unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period.

(2) A licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(10) is not subject to the restrictions in subsection (1) at any of the brewery's licensed premises for products manufactured by the licensed brewery."

Section 6. Section 16-3-311, MCA, is amended to read:

"**16-3-311. Suitable premises for licensed retail establishments.** (1) (a) A licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The licensed retailer must demonstrate that it has adequate control over all alcoholic beverages to prevent self-service, service to underage persons, and service to persons who are actually or apparently intoxicated. Except as provided in ~~subsection~~ *subsections* (8) *and (10)*, the premises must be separated from the rest of the building by permanent walls but may have inside access to the rest of the building at all times even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served. If the premises are located in a portion of a building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access.

(b) A resort retail all-beverages licensee or a retail all-beverages licensee within the boundaries of a resort area may also utilize an alternate alcoholic beverage storage facility as allowed in 16-4-213(8).

(2) A licensee may alter the approved floorplan of the premises. The alteration must be consistent with the requirements of subsection (1)(a). A licensee shall provide a copy of the revised floorplan with the proposed alteration for the licensed premises to the department within 7 days of beginning the alteration. Department approval may not be unreasonably withheld. If the completed alteration differs from the approved alteration due to modifications required for approval by other state or local government entities, such as compliance with fire or building codes, the department must be notified, but preapproval is not required for these modifications. An alteration for the purposes of this section is any structural change in a premises that does not increase the square footage of the existing approved premises. An alteration that increases the square footage of the existing approved premises must be approved by the department prior to beginning the alteration. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section.

(3) The interior portion of the licensed premises must be a continuous area that is under the control of the licensee and not interrupted by any area in which the licensee does not have adequate control, and includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in order to allow patrons to access other tenant businesses or private dwellings in the same building, including but not limited to entryways, hallways, stairwells, and elevators.

(4) The premises may include one or more exterior patios or decks as long as sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and impedes foot traffic.

(5) Premises suitability does not include a minimum number of seats.

(6) A licensed retailer may apply to the department to have a noncontiguous storage area that is under the control of the licensed retailer approved for onsite alcoholic beverage storage separate from its service area as long as the licensed retailer demonstrates that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access. The application fee is $100.

(7) A licensed retailer operating within a hotel or similar short-term lodging facility may apply to the department to allow for the delivery of alcoholic beverages to guests of accommodation units, and the prestocking of alcoholic beverages in accommodation units is allowed for the accommodation units within the property as long as the purchaser's age is verified and there are adequate safeguards in place to prevent underage service. The application fee is $100.

(8) An on-premises consumption retailer may be located adjacent to a brewery or winery if the licensees are able to maintain control of their respective premises through adequate physical separation.

(9) (a) For the purposes of this section, "adequate physical separation" means:

(i) the premises of the retailer and the premises of the brewery or winery are secured after business hours from each other and from any other business, including but not limited to prohibiting a customer from accessing a brewery sample room and purchasing alcohol after the brewery tasting room hours of operation as specified in 16-3-213(2)(b); and

(ii) the separation may include doors, gates, or windows that may be left open during business hours.

(b) The term does not require permanent floor-to-ceiling walls.

(10) For colocated premises authorized in 16-4-401(10), there are no physical separation requirements applied by this code but the licensee shall follow any federal requirements."

Section 7. 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;

(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; or

(j) offer wine in its original packaging, prepared servings, or growlers for curbside pickup between 8 a.m. and 2 a.m.

(2) (a) ~~A~~ *Except as provided in 16-4-401(10)(d), 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) 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.

(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, pursuant to 16-1-411, electronically file a report in the manner and form prescribed by the department, reporting the amount of wine or hard cider, or both, that it shipped in the state during the preceding 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 wine or hard cider, or both, within this state conforms to the requirements of this code."

Section 8. Section 16-4-105, MCA, is amended to read:

"**16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person or business entity that is approved by the department, subject to the following exceptions:

(a) The number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each additional 2,000 inhabitants.

(b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail beer licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of an incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(i) the county boundary within which the incorporated city or incorporated town is located; or

(ii) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(d) Retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations.

(e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in *continuous* existence for a period of 5

years or more prior to January 1, 1949*, and is applying for a license at the same location that it has occupied for the last 5 years. A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization that has held a veterans' or fraternal license within the past 10 years is not subject to the 5-year same location requirement.*

(f) The number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (8) does not apply to licenses issued under this subsection (1)(f). The owner of the license whose premises are situated outside of an incorporated city or incorporated town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(b) If any new retail beer licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (1)(c), the department shall publish the availability of no more than one new beer license a year until the quota has been reached.

(c) If any new retail beer licenses are allowed by license transfers as provided in subsection (2)(a), the department may publish the availability of more than one new license a year until the quota has been reached.

(3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of the annexation.

(4) When the department determines that a quota area is eligible for a new retail beer license under subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

(5) Except as provided in subsection (2)(b), when more than one new beer license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(6) (a) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(b) A person licensed under this subsection (6) may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The

purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

(c) A person licensed under this subsection (6) may possess and use liquor in the kitchen of the licensed premises only for the preparation of food and as long as the alcohol content is cooked out of the food at the time of serving. Nothing in this subsection (6)(c) authorizes a licensee to consume, sell, serve, or give away liquor.

(7) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in original packaging, prepared servings, or growlers.

(8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a $25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

(10) The department may adopt rules to implement this section."

Section 9. Section 16-4-201, MCA, is amended to read:

"**16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 3,000 inhabitants and within 5 miles of the corporate limits of the cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of more than 3,000 inhabitants and within 5 miles of the corporate limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(a) the county boundary within which the incorporated city or incorporated town is located; or

(b) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(3) (a) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(b) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(i) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(ii) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(iii) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(4) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (3) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(5) (a) If any new retail all-beverages licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (3), the department shall publish the availability of no more than one new retail all-beverages license a year until the quota has been reached. The department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

(b) If any new all-beverages licenses are allowed by license transfers as provided in subsection (4), the department may publish the availability of more than one new license a year until the quota has been reached.

(6) Except as provided in subsection (5)(a), when more than one new all-beverages license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(7) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may not be issued in violation of the limitations.

(8) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and nonassignable, as to ownership only, retail license to:

(a) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985;

(b) a continuing care retirement community as provided in 16-4-315; or

~~(b)~~*(c)* any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in *continuous* existence for a period of 5 years or more prior to January 1, 1949*, and is applying for a license at the same location that it has occupied for the last 5 years. A post of a nationally chartered veteran's*

organization or a lodge of a recognized national fraternal organization that has held a veterans' or fraternal license within the past 10 years is not subject to the 5-year same-location requirement; ~~or~~.

~~(c) a continuing care retirement community as provided in 16-4-315.~~

(9) The number of retail all-beverages licenses that the department may issue for use at premises situated more than 5 miles outside of any incorporated city or incorporated town may not be more than one license for each 750 in population of the county after excluding the population of incorporated cities and incorporated towns in the county.

(10) An all-beverages license issued under subsection (9) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of annexation.

(11) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in original packaging, prepared servings, or growlers.

(12) A person licensed under this section may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

(13) The department may adopt rules to implement this section."

Section 10. Section 16-4-311, MCA, is amended to read:

"**16-4-311. Distillery license.** (1) The department may, upon receipt of an application, issue a distillery license to a person who is authorized under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, to distill, rectify, bottle, and process liquor. A licensee may import, manufacture, distill, rectify, blend, denature, and store spirits of an alcoholic content greater than 0.5% alcohol by volume for sale to the department or as provided in 16-4-312 and may transport the liquor out of this state for sale outside this state. Distillery licensees must be permitted to purchase, from and through the department, alcoholic beverages for blending and manufacturing purposes upon terms and conditions that the department may provide. A licensee may not sell any alcoholic beverage within this state except to the department or as provided in 16-4-312.

(2) An agricultural producer or association of agricultural producers or legal agent who manufactures and converts agricultural surpluses, byproducts, or wastes into denatured ethyl and industrial alcohol for purposes other than human consumption is not required to obtain a distillery license from the department.

(3) (a) A distillery producing less than 25,000 gallons of product annually may deliver its product directly to a state agency liquor store if the distillery uses the distillery's own equipment, trucks, and employees to deliver the product. The amount of product delivered may not be less than a case. The department shall create an electronic reporting system for distilleries to record deliveries made under this subsection (3). Agency liquor stores must be invoiced by the department for product received from a distillery.

(b) A distillery delivering its product pursuant to this subsection (3) shall maintain records of each delivery, subject to inspection by the department.

(c) The department shall pay the distillery for any product delivered to an agency liquor store:

(i) the current freight rate; and

(ii) the distiller's current quoted price per case.

(d) For a licensed distillery holding complete ownership of a retail license pursuant to 16-4-401(10), liquor that is manufactured and sold at the colocated premises is not subject to the limitations imposed by subsection (3)(a) or the limitations and privileges of 16-4-312(3). Liquor manufactured and sold at the colocated premises does count toward production levels for tax purposes."

Section 11. Section 16-4-401, MCA, is amended to read:

"**16-4-401. License as privilege -- criteria for decision on application -- *colocated licenses.*** (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) and the application is approved, the applicant will not possess an ownership interest in more than three establishments licensed under this chapter for all-beverages sales. However, resort retail all-beverages licenses issued under 16-4-213 do not count toward this limit.

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) *except as provided in subsection (10),* the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an applicant's spouse may possess an ownership interest in one or more manufacturer licenses;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (2)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license;

(v) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored; and

(vi) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of subsection (8) apply.

(iv) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for

an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of subsection (8) apply.

(iv) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (2)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (2)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (2)(a).

(3) In the case of a license that permits only off-premises consumption and subject to subsection (8), the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) and the application is approved, the applicant will not possess an ownership interest in more than three establishments licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (3)(a)(v) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license; and

(vi) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a).

(ii) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (3)(a). If no single owner owns

more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (3)(a).

(ii) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (3)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (3)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (3)(a).

(4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) *except as provided in subsection (10),* the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (4)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the applicant must designate two or more officers or board members, each of whom must meet the requirements for

an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the requirements of subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (4)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (4)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (4)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (4)(a).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302.

(7) An applicant's source of funding must be from a suitable source. A lender or other source of money or credit may be found unsuitable if the source:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of alcoholic beverages; or

(iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business; or

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense.

(8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity applying for an all-beverages license may not, if the application were to be approved, own an interest in more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

(b) If two or more individuals through business or family relationship share in the profits or liabilities of all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages licenses will be held.

(9) (a) Except as specifically provided in this code relating to financial interests in licenses, nothing in this section applies or otherwise prohibits an applicant or licensee from obtaining personal financing from a licensed financial institution, taking advantage of consumer credit, or using a personal credit card to make purchases on behalf of a licensed entity if the applicant or licensee is reimbursed by the licensed entity within 90 days. An applicant or individual may obtain multiple transactions up to an aggregate maximum of $100,000 with each individual transaction not to exceed $25,000 to be used on behalf of the licensed entity.

(b) A licensee's use of short-term financing of 90 days or less from institutional lenders and noninstitutional lenders does not constitute an undisclosed ownership interest in the license.

(c) It is the intent of this subsection (9) to facilitate the efficient administration of an entity licensed under this code.

(10) (a) A person with an ownership interest in a licensed brewery or licensed winery may hold complete ownership of up to a combined total of three retail licenses issued pursuant to 16-4-105 or 16-4-201. The owner of a retail license issued pursuant to 16-4-105 or 16-4-201 may hold complete ownership of brewery or winery licenses. The first of these licenses must be a colocated license.

(b) A person with an ownership interest in a licensed distillery may hold complete ownership of up to three retail licenses issued pursuant to 16-4-201. The owner of a retail license issued pursuant to 16-4-201 may hold complete ownership of distillery licenses. The first of these licenses must be a colocated license.

(c) A person with an ownership interest in a retail license issued pursuant to 16-4-105 may not also have an ownership interest in a distillery license.

(d) To hold both a manufacturing license and a retail license pursuant to this subsection (10), a licensee:

(i) must maintain both the manufacturing license and the retail license on the same premises for the first of these licenses, known as a colocated premises;

(ii) must have 100% of the same ownership between the manufacturing license and the retail license; and

(iii) must provide and serve through the retail license alcohol produced by other manufacturers that are not affiliated or financially interested, either directly or indirectly, in the conduct or operation of the business in which the license was issued pursuant to 16-4-105 and 16-4-201, or the licensed brewery, winery, or distillery.

(e) Colocated licensees may transfer beer manufactured, liquor distilled, or wine produced by the licensee between the colocated manufacturing license and the retail license without it being considered distributed or delivered as provided in this code.

(f) For the purposes of this code, the following definitions apply:

(i) "Colocated license" means a manufacturing license and a retail license owned completely by a licensee and that are operated at one premises.

(ii) "Colocated premises" means a premises where a manufacturing license and a retail license are both located."

Section 12. Section 16-4-420, MCA, is amended to read:

"**16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;

(b) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron

who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(c) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.

(3) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) and (3)(b). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license; and

(b) (i) the applicant's premises are suitable for the carrying on of the business;

(ii) the applicant is qualified to receive a license prior to a determination that the applicant's premises are suitable for carrying on with the business in accordance with 16-4-417; or

(iii) if the applicant has already been issued a license, the proposed premises are suitable for the carrying on of the business and the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6). If a license is issued without a premises, the license will immediately be placed on nonuse status until the premises are approved subject to 16-4-417.

(6) (a) For purposes of this section, "restaurant" means a public eating place:

(i) where individually priced meals are prepared and served for on-premises consumption;

(ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food.

(iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant; and

(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.

(b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in throw-away containers not reused in the same restaurant.

(7) (a) A restaurant beer and wine license not issued through a competitive bidding process as provided in 16-4-430 may be transferred, on approval by the department, from the original applicant to a new owner of the restaurant only after 1 year of use by the original owner, unless that transfer is due to the death of an owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.

(d) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(A) the county boundary within which the incorporated city or incorporated town is located; or

(B) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(9) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

(b) If any new restaurant beer and wine licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in 16-4-105 and subsection (9)(a) of this section, the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached.

(c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in subsection (9)(a), the department may publish the availability of more than one new license a year until the quota has been reached.

(10) Except as provided in subsection (9)(b), when more than one new restaurant beer and wine license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(11) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in a quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available.

(12) When the department determines that a quota area is eligible for a new restaurant beer and wine license under subsection (9) or (11), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for a new license.

(13) (a) Except as provided in subsection (13)(b), beer and wine may be sold for off-premises consumption, including curbside pickup, during the hours of 11 a.m. and 11 p.m. in original packaging, prepared servings, or growlers. If offering off-premises sales, food must also be ordered, the beer or wine must be stated on the food bill, and the sales must count toward the 65% limit as provided in this section.

(b) A restaurant beer and wine licensee may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

(14) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not decide either to grant or to deny the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or fewer;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(15) The annual fee for a restaurant beer and wine license is $400.

(16) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees

paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(17) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(18) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

(19) A person licensed under this section may possess and use liquor in the kitchen of the licensed premises only for the preparation of food and as long as the alcohol content is cooked out of the food at the time of serving. Nothing in this subsection authorizes a licensee to consume, sell, serve, or give away liquor.

~~(19)~~*(20)* The department may adopt rules to implement this section."

Section 13. Coordination instruction. If House Bill No. 242, Senate Bill No. 75, and [this act] are passed and approved and all contain a section that amends 16-4-401, then the sections amending 16-4-401 are void and 16-4-401 must be amended as follows:

"16-4-401. License as privilege -- criteria for decision on application -- *restrictions -- colocated licenses.* (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in 16-4-311 and subsection ~~(6)~~ *(5)* of this section and subject to subsection (8), ~~in the case of a license that permits on premise consumption,~~ the department shall find in every case in which it makes an order for the issuance of a new license, ~~or~~ for the approval of the transfer of a license*, or the renewal of a license* that:

(a) if the applicant is an individual:

~~(i) and the application is approved, the applicant will not possess an ownership interest in more than three establishments licensed under this chapter for all-beverages sales. However, resort retail all-beverages licenses issued under 16-4-213 do not count toward this limit.~~

~~(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1- 106;~~

~~(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an applicant's spouse may possess an ownership interest in one or more manufacturer licenses;~~

~~(iv)~~*(i)* the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments~~; however nothing in this subsection (2)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license~~;

~~(v)~~*(ii)* the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored; and

~~(vi)~~*(iii)* the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) ~~each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock,~~ the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a)~~.~~*;*

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a); *and*

~~(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of subsection (8) apply.~~

~~(iv)~~*(iii)* the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation*, all of the following must apply:*

(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of subsection ~~(8)~~ *(7)* apply.

(iv) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (2)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (2)(a).

(f) if the applicant is a limited liability company~~;~~*:*

(i) all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (2)(a).

(ii) the limited liability company is authorized to do business in Montana;

(g) if the applicant is a trust, the trustee must meet the requirements of subsection (2)(a);

(h) if the applicant is a nonprofit organization:

(i) the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a); and

(ii) the nonprofit organization is authorized to do business in Montana;

(i) if the applicant is a cooperative association:

(i) the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a); and

(ii) the cooperative association is authorized to do business in Montana.

~~(3) In the case of a license that permits only off-premises consumption and subject to subsection (8), the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:~~

~~(a) if the applicant is an individual:~~

~~(i) and the application is approved, the applicant will not possess an ownership interest in more than three establishments licensed under this chapter for all-beverages sales;~~

~~(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1- 106;~~

~~(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;~~

~~(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;~~

~~(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (3)(a)(v) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license; and~~

~~(vi) the applicant is not under 19 years of age;~~

~~(b) if the applicant is a publicly traded corporation:~~

~~(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a).~~

~~(ii) the corporation is authorized to do business in Montana;~~

~~(c) if the applicant is a privately held corporation:~~

~~(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (3)(a).~~

~~(ii) the corporation is authorized to do business in Montana;~~

~~(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a);~~

~~(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (3)(a).~~

~~(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (3)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (3)(a).~~

~~(4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:~~

~~(a) if the applicant is an individual:~~

~~(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;~~

~~(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1- 106;~~

~~(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;~~

~~(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (4)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license;~~

~~(v) the applicant is not under 19 years of age; and~~

~~(vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage;~~

~~(b) if the applicant is a publicly traded corporation:~~

~~(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a).~~

~~(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and~~

~~(iii) the corporation is authorized to do business in Montana;~~

~~(c) if the applicant is a privately held corporation:~~

~~(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the applicant must designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the requirements of subsection (4)(a).~~

~~(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and~~

~~(iii) the corporation is authorized to do business in Montana;~~

~~(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (4)(a);~~

~~(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all limited partners must meet the requirements of subsection (4)(a).~~

~~(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (4)(a). If no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of subsection (4)(a).~~

(3) The applicant and any individual of the applicant who must meet the requirements of (2)(a) must be current on all tax filings, taxes, interest, and penalties due to the state; however, nothing in this subsection authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license.

~~(5)~~*(4)* In the case of a corporate applicant, the requirements of subsections (2)(b)~~, (3)(b), and (4)(b)~~ *or (2)(c)* apply separately to each class of stock.

~~(6)~~*(5)* The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302 *or an applicant for registration under 16-4-101 or 16-4-107*.

~~(7)~~*(6)* An applicant's source of funding must be from a suitable source. A lender or other source of money or credit may be found unsuitable if the source:

(a) is a person whose prior financial or other activities or criminal record:

(i) poses a threat to the public interest of the state;

(ii) poses a threat to the effective regulation and control of alcoholic beverages; or

(iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business; or

(b) has been convicted of a felony ~~offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense.~~

~~(8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity applying for an all-beverages license may not, if the application were to be approved, own an interest in more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.~~

~~(b) If two or more individuals through business or family relationship share in the profits or liabilities of all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages licenses will be held~~ *unless the person's rights have been restored.*

~~(9)~~*(7)* (a) Except as specifically provided in this code relating to financial interests in licenses, nothing in this section applies or otherwise prohibits an applicant or licensee from obtaining personal financing from a licensed financial institution, taking advantage of consumer credit, or using a personal credit card to make purchases on behalf of a licensed entity if the applicant or licensee is reimbursed by the licensed entity within 90 days. An applicant or individual may obtain multiple transactions up to an aggregate maximum of $100,000 with each individual transaction not to exceed $25,000 to be used on behalf of the licensed entity.

(b) A licensee's use of short-term financing of 90 days or less from institutional lenders and noninstitutional lenders does not constitute an undisclosed ownership interest in the license.

(c) It is the intent of this subsection ~~(9)~~ *(7)* to facilitate the efficient administration of an entity licensed under this code.

(8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity applying for an all-beverages license may not, if the application were to be approved, own an interest in more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

(b) If two or more individuals through a business or family relationship share in the profits or liabilities of all-beverages licenses, the aggregate number of licenses in which they share in the profits or liabilities may not exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages licenses will be held.

(c) An applicant applying for an all-beverages license and any individual of the applicant who must meet the requirements of subsection (2)(a) may not, if the application were to be approved, possess an ownership interest in more than the limit established in 16-4-205 for establishments licensed under this

chapter for all-beverages sales. However, resort retail all-beverages licenses issued under 16-4-213 do not count toward this limit.

(d) An applicant and any individual of the applicant who must meet the requirements of subsection (2)(a) may not possess an ownership interest in an agency liquor store as defined in 16-1-106.

(e) Except as provided in subsection (9), an applicant for an on-premises consumption license or any member of the applicant's immediate family must be without financing from and may not have any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an applicant's spouse may possess an ownership interest in one or more manufacturer licenses. This prohibition also applies to any individual of the applicant who must meet the requirements of subsection (2)(a).

(f) An applicant for an off-premises consumption license or any member of the applicant's immediate family must be without financing from and may not have any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages. This prohibition also applies to any individual of the applicant who must meet the requirements of subsection (2)(a).

(g) Except as provided in subsection (9), an applicant for a manufacturing, importing, or wholesaling license and any individual of the applicant who must meet the requirements of subsection (2)(a) may not possess an ownership interest in any establishment licensed under this chapter for retail alcoholic beverage sales.

(h) An applicant for a wholesale license and any individual of the applicant who must meet the requirements of subsection (2)(a) may not be a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage.

(9) (a) A person with an ownership interest in a licensed brewery or licensed winery may hold complete ownership of up to a combined total of three retail licenses issued pursuant to 16-4-105 or 16-4-201. The owner of a retail license issued pursuant to 16-4-105 or 16-4-201 may hold complete ownership of brewery or winery licenses. The first of these licenses must be a colocated license.

(b) A person with an ownership interest in a licensed distillery may hold complete ownership of up to three retail licenses issued pursuant to 16-4-201. The owner of a retail license issued pursuant to 16-4-201 may hold complete ownership of distillery licenses. The first of these licenses must be a colocated license.

(c) A person with an ownership interest in a retail license issued pursuant to 16-4-105 may not also have an ownership interest in a distillery license.

(d) To hold both a manufacturing license and a retail license pursuant to this subsection (9), a licensee:

(i) must maintain both the manufacturing license and the retail license on the same premises for the first of these licenses, known as a colocated premises;

(ii) must have 100% of the same ownership between the manufacturing license and the retail license; and

(iii) must provide and serve through the retail license alcohol produced by other manufacturers that are not affiliated or financially interested, either directly or indirectly, in the conduct or operation of the business in which the license was issued pursuant to 16-4-105 and 16-4-201, or the licensed brewery, winery, or distillery.

(e) Colocated licenses may transfer beer manufactured, liquor distilled, or wine produced by the licensee between the colocated manufacturing license and the retail license without it being considered distributed or delivered as provided in this code.

(f) For the purposes of this code, the following definitions apply:

(i) "Colocated license" means a manufacturing license and a retail license owned completely by a licensee and that are operated at one premises.

(ii) "Colocated premises" means a premises where a manufacturing license and a retail license are both located."

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 602

[HB 312]

AN ACT PROVIDING FOR DESIGNATION OF RURAL EMERGENCY HOSPITALS; ESTABLISHING REQUIREMENTS FOR DESIGNATION; PROVIDING A DEFINITION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-66-101, 33-36-103, 40-6-402, 50-5-101, 50-5-701, 50-5-1301, 50-16-103, AND 50-17-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Designation as rural emergency hospital -- requirements -- rulemaking. (1) The department may designate as a rural emergency hospital a facility that operates for the purpose of providing emergency department services, observation care, and outpatient services and in which the annual per patient average length of stay does not exceed 24 hours. The designation is available to a facility that, as of December 27, 2020, was licensed as:

(a) a critical access hospital; or

(b) a hospital with 50 or fewer beds if the hospital is:

(i) located in a county in a rural area as defined in the federal Social Security Act, 42 U.S.C. 1395ww(d)(2)(D); or

(ii) deemed as being located in a rural area pursuant to the federal Social Security Act, 42 U.S.C. 1395ww(d)(8)(E).

(2) A hospital seeking rural emergency hospital designation:

(a) shall maintain a 24-hour emergency department that:

(i) provides emergency and observation care;

(ii) is open 7 days a week; and

(iii) is staffed with a physician, an advanced practice registered nurse certified as a nurse practitioner or clinical nurse specialist, or a physician assistant;

(b) must have:

(i) a transfer agreement in effect with a hospital that is designated by the department pursuant to 50-6-410 as, at a minimum, a regional trauma center; and

(ii) any other transfer agreement necessary for patient care;

(c) shall provide laboratory services; and

(d) shall provide pharmacy services or maintain a drug storage area.

(3) A rural emergency hospital may:

(a) provide outpatient services as allowed by the department by rule, in accordance with federal regulations governing rural emergency hospitals; and

(b) own and operate an entity that provides ambulance services.

(4) A rural emergency hospital may not have inpatient beds unless the hospital has a unit that is a distinct part of the hospital and is licensed as a skilled nursing facility to provide extended posthospital care.

(5) A facility that applies for a rural emergency hospital designation shall include with its application:

(a) an action plan for initiating rural emergency hospital services, including a detailed transition plan that lists the specific services the facility will retain, modify, add, and discontinue;

(b) a description of services that the facility intends to provide on an outpatient basis; and

(c) other information as required by the department by rule.

(6) A hospital or critical access hospital that applies for the designation and elects to operate as a rural emergency hospital may later transition back to its original license as a hospital or critical access hospital.

(7) Before approving an application under this section, the department shall adopt rules necessary to implement this section, including but not limited to:

(a) licensure standards that satisfy the requirement for reimbursement by federal health care programs as a rural emergency hospital;

(b) procedures for applying for and receiving designation as a rural emergency hospital; and

(c) services the facility may provide on an outpatient basis, in accordance with federal regulations governing rural emergency hospital designation.

Section 2. Section 15-66-101, MCA, is amended to read:

"**15-66-101. (Temporary) Definitions.** For purposes of this chapter, the following definitions apply:

(1) (a) "Hospital" has the meaning provided in 50-5-101 and includes a critical access hospital *and a rural emergency hospital* as *those terms are* defined in 50-5-101.

(b) The term does not include the Montana state hospital or a hospital or facility operated by the state, a political subdivision of the state, the United States, or an Indian tribe or any facility authorized under the Indian Health Care Improvement Act.

(2) (a) "Hospital outpatient revenue" means the gross revenue from a hospital's charges for services provided on an outpatient basis.

(b) The term does not include charges for professional services provided as part of the outpatient treatment.

(3) (a) "Inpatient bed day" means a day of inpatient care provided to a patient in a hospital. A day begins at midnight and ends 24 hours later. A part of a day, including the day of admission, counts as a full day. The day of discharge or death is not counted as a day. If admission and discharge or death occur on the same day, the day is considered a day of admission and is counted as one inpatient bed day. Inpatient bed days include all inpatient hospital benefit days as defined for medicare reporting purposes in section 20.1 of chapter 3 of the centers for medicare and medicaid services publication 100-02, the Medicare Benefit Policy Manual. Inpatient bed days also include all nursery days during which a newborn infant receives care in a nursery.

(b) The term does not include observation days or days of care in a swing bed, as defined in 50-5-101.

(4) "Patient" means an individual obtaining skilled medical and nursing services in a hospital. The term includes newborn infants.

(5) "Report" means the report of inpatient bed days and hospital outpatient revenue required in 15-66-201.

(6) "Utilization fee" or "fee" means the fees required to be paid as provided in 15-66-102. (Void on occurrence of contingency--sec. 18, Ch. 390, L. 2003--see

chapter compiler's comment; terminates June 30, 2025, on occurrence of contingency--sec. 48, Ch. 415, L. 2019.)

15-66-101. (Temporary -- effective on occurrence of contingency) Definitions. For purposes of this chapter, the following definitions apply:

(1) (a) "Hospital" means a facility licensed as a hospital pursuant to Title 50, chapter 5, and includes a critical access hospital.

(b) The term does not include the Montana state hospital.

(2) (a) "Inpatient bed day" means a day of inpatient care provided to a patient in a hospital. A day begins at midnight and ends 24 hours later. A part of a day, including the day of admission, counts as a full day. The day of discharge or death is not counted as a day. If admission and discharge or death occur on the same day, the day is considered a day of admission and is counted as one inpatient bed day. Inpatient bed days include all inpatient hospital benefit days as defined for medicare reporting purposes in section 20.1 of chapter 3 of the centers for medicare and medicaid services publication 100-02, the Medicare Benefit Policy Manual. Inpatient bed days also include all nursery days during which a newborn infant receives care in a nursery.

(b) The term does not include observation days or days of care in a swing bed, as defined in 50-5-101.

(3) "Patient" means an individual obtaining skilled medical and nursing services in a hospital. The term includes newborn infants.

(4) "Report" means the report of inpatient bed days required in 15-66-201.

(5) "Utilization fee" or "fee" means the fee required to be paid for each inpatient bed day, as provided in 15-66-102. (Void on occurrence of contingency--sec. 18, Ch. 390, L. 2003--see chapter compiler's comment.)"

Section 3. Section 33-36-103, MCA, is amended to read:

"**33-36-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

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

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, ~~or~~ critical access hospital*, or rural emergency hospital*, as *those terms are* defined in 50-5-101, or other licensed inpatient center, an outpatient center for surgical services, a treatment center, a skilled nursing center, a residential treatment center, a diagnostic laboratory, a diagnostic imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

(20) "Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan."

Section 4. Section 40-6-402, MCA, is amended to read:

"**40-6-402. Definitions.** As used in this part, the following definitions apply:

(1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.

(2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.

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

(4) "Emergency services provider" means:

(a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or

(b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

(5) "Fire department" means a governmental fire agency organized under Title 7, chapter 33.

(6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

(8) "Hospital" has the meaning provided in 50-5-101 *and includes a rural emergency hospital*

(9) "Law enforcement agency" means a police department, a sheriff's office, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

(10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

(11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn."

Section 5. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation status to the outpatient centers for surgical services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a long-term care facility located in the geographic area affected by the application, an agency that establishes rates for long-term care facilities, or a third-party payer who reimburses long-term care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a long-term care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a new health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

(a) an existing health care facility; or

(b) a long-term care facility as defined in 50-5-301.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

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

(20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and requirements.

(21) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

(22) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(23) "Federal acts" means federal statutes for the construction of health care facilities.

(24) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(25) "Healthcare facilities accreditation program" means the program nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, ~~and~~ residential treatment facilities*, and rural emergency hospitals*.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(27) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(28) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(29) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(30) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(31) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided must include medical personnel available to provide emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(c) The emergency care requirement for a hospital that specializes in providing health services for psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed registered nurses.

(32) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(33) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(34) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(35) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(36) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(37) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who

do not require institutional health care; or correctional facilities operating under the authority of the department of corrections.

(38) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(39) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(40) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(41) "Offer" means the representation by a health care facility that it can provide specific health services.

(42) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(43) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(44) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(45) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(46) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(47) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(48) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(49) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(50) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by

providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(51) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(52) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(53) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(54) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(55) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(56) "Rural emergency hospital" means a facility defined in 42 U.S.C. 1395x(kkk)(2) that is designated by the department as a rural emergency hospital in accordance with [section 1].

~~(56)~~*(57)* "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(57)~~*(58)* (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection ~~(57)~~ *(58)*, a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

~~(58)~~*(59)* "State long-term care facilities plan" means the plan prepared by the department to project the need for long-term care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(59)~~*(60)* "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

~~(60)~~*(61)* "The joint commission" means the organization nationally recognized by that name that surveys health care facilities upon their requests

and grants accreditation status to a health care facility that it finds meets its standards and requirements."

Section 6. Section 50-5-701, MCA, is amended to read:

"**50-5-701. Definitions.** As used in this part, the following definitions apply:

(1) "Aftercare" means assistance provided by a lay caregiver to a patient after the patient's discharge from a hospital and limited to the patient's condition at the time of discharge, including but not limited to assistance with:

(a) basic activities of daily living;

(b) instrumental activities of daily living; and

(c) medical or nursing tasks that do not require a licensed professional.

(2) "Discharge" means a patient's exit or release from a hospital to the patient's residence after an inpatient hospital admission.

(3) "Entry" means an individual's admission into a hospital for the purposes of inpatient care.

(4) "Hospital" means a hospital, ~~or~~ critical access hospital, *or rural emergency hospital* as those terms are defined in 50-5-101.

(5) (a) "Lay caregiver" means an individual designated as a lay caregiver by a patient or the patient's legal representative to provide aftercare to a patient in the patient's residence. The term includes but is not limited to a spouse, relative, partner, friend, or neighbor.

(b) The term does not include an individual who receives a third-party payment for providing post-discharge assistance to a patient unless the individual is providing assistance under a Medicaid self-directed service delivery model authorized by the state.

(6) "Legal representative" means:

(a) a legal guardian;

(b) a person who holds a medical power of attorney; or

(c) a representative named in an advance health care directive recognized under Montana law or the law of another state.

(7) (a) "Residence" means a dwelling that the patient considers to be the patient's home, including the home of a lay caregiver, relative, or friend.

(b) The term does not include an assisted living facility, state-licensed group home, hospital, rehabilitation facility, or skilled nursing facility."

Section 7. Section 50-5-1301, MCA, is amended to read:

"**50-5-1301. Definitions.** As used in this part, the following definitions apply:

(1) "Adult" means any person 18 years of age or older.

(2) "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.

(3) "Attending health care provider" means the physician, advanced practice registered nurse, or physician assistant, whether selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

(4) "Decisional capacity" means the ability to provide informed consent to or refuse medical treatment or the ability to make an informed health care decision as determined by a health care provider experienced in this type of assessment.

(5) "Health care facility" means a hospital, critical access hospital, *rural emergency hospital,* or facility providing skilled nursing care as those terms are defined in 50-5-101.

(6) "Health care provider" means any individual licensed or certified by the state to provide health care.

(7) "Interested person" means a patient's:

(a) spouse;

(b) parent;

(c) adult child, sibling, or grandchild; or

(d) close friend.

(8) "Medical proxy decisionmaker" means a physician or advanced practice registered nurse designated by the attending health care provider.

(9) "Physician" means an individual licensed pursuant to Title 37, chapter 3.

(10) "Physician assistant" means an individual licensed pursuant to Title 37, chapter 20, whose duties and delegation agreement authorizes the individual to undertake the activities allowed under this part.

(11) (a) "Lay proxy decisionmaker" means an interested person selected pursuant to this part authorized to make medical decisions and discharge and transfer dispositions for a patient who lacks decisional capacity.

(b) The term does not include the patient's attending health care provider."

Section 8. Section 50-16-103, MCA, is amended to read:

"**50-16-103. Information on shaken baby syndrome -- program.** (1) There is a shaken baby syndrome education program established in the department.

(2) The department shall:

(a) develop educational materials that present readily comprehensible information on shaken baby syndrome; and

(b) post the materials on the department's website in an easily accessible format.

(3) The materials required to be produced by this section must be distributed at no cost to the recipients.

(4) For purposes of 50-16-104 and this section, the following definitions apply:

(a) "Child care facility" means a day-care center, day-care facility, family day-care home, or group day-care home as those terms are defined in 52-2-703.

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

(c) "Hospital" means a hospital *or rural emergency hospital*, as *those terms are* defined in 50-5-101, that regularly provides maternity, pediatric, or obstetrical care.

(d) "Parent" means either parent, unless the parents are not married or are separated or divorced, in which case, the term means the custodial parent. The term also means a prospective adoptive parent or foster parent with whom the child is placed.

(e) "Shaken baby syndrome" means damage to the brain of an infant or young child, including but not limited to swelling that impedes the supply of oxygen to the brain or any degree of brain damage that results from the infant or young child having been forcefully shaken."

Section 9. Section 50-17-102, MCA, is amended to read:

"**50-17-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Acute heart attack" means a heart attack that involves a prolonged period of blocked blood supply, affects a large area of the heart, and is measured by an elevation of the ST segment of an electrocardiogram.

(2) "Approved course of treatment" means a course of treatment for tuberculosis that includes medical treatment prescribed by a physician and

consistent with accepted medical standards, as well as appropriate followup to ensure public health and safety as set out in the rules of the department.

(3) "Critical access hospital" has the meaning provided in 50-5-101.

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

(5) "Emergency medical service" has the meaning provided in 50-6-302.

(6) "Hospital" has the meaning provided in 50-5-101 *and includes a rural emergency hospital as defined in 50-5-101.*

(7) "Local board" means a city, county, city-county, or district board of health.

(8) "Receiving hospital" means a hospital capable of performing coronary revascularization for a patient suffering an acute heart attack.

(9) "Treatment location" or "location" means a hospital or other place designated by a local health officer where the person diagnosed with tuberculosis must remain to be available for an approved course of treatment.

(10) (a) "Tuberculosis" means a disease caused by mycobacterium tuberculosis or mycobacterium tuberculosis complex.

(b) The term does not include infection by mycobacterium bovis in a nonpulmonary site that is a result of instillation of bacille calmette-guerin as part of cancer therapy."

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, apply to [section 1].

Section 11. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 603

[HB 314]

AN ACT INCREASING THE DAILY RATE OF COMPENSATION FOR BOARDS, COMMISSIONS, AND COUNCILS; STANDARDIZING COMPENSATION RATES FOR BOARDS, COMMISSIONS, AND COUNCILS; REMOVING DISCRETIONARY ADJUSTMENT OF COMPENSATION BASED ON THE PERSONAL CONSUMPTION EXPENDITURES PRICE INDEX; AMENDING SECTIONS 2-15-122, 2-15-124, 5-2-301, 19-20-202, 23-7-201, 37-43-201, 53-19-304, AND 87-1-251, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-15-122, MCA, is amended to read:

"**2-15-122. Creation of advisory councils.** (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that the official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. The creating authority shall file a record of each council created by it in the office of the governor and the office of the secretary of state in accordance with subsection (9).

(2) Each advisory council created under this section must be known as the ".... advisory council".

(3) The creating authority shall:

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the creating authority; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity, as defined in 2-15-102.

(5) (a) Unless an advisory council member is a full-time salaried officer or employee of this state or of any political subdivision of this state, the member is entitled to be paid in an amount to be determined by the department head, not to exceed ~~$50~~ *$100* for each day in which the member is actually and necessarily engaged in the performance of council duties and to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. ~~The maximum daily pay rate must be adjusted for inflation annually by multiplying the base income of $50 by the ratio of the PCE for the second quarter of the previous year to the PCE for the second quarter of 1995 and rounding the product to the nearest whole dollar amount.~~

(b) Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year, an advisory council shall elect a presiding officer and other officers that it considers necessary.

(7) Unless otherwise specified by the creating authority, an advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the presiding officer or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c), an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor shall file in the governor's office and in the office of the secretary of state a record of the council created showing:

(a) the council's name, in accordance with subsection (2);

(b) the council's composition;

(c) the appointed members, including names and addresses;

(d) the council's purpose; and

(e) the council's term of existence, in accordance with subsection (10).

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the appointing authority in the manner set forth in subsection (1). If the existence of an advisory council is extended, the appointing authority shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of

the secretary of state. The existence of any advisory council may be extended as many times as necessary.

~~(11) For the purposes of this section, "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce.~~"

Section 2. Section 2-15-124, MCA, is amended to read:

"**2-15-124. Quasi-judicial boards.** If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member must be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members must be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members must be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of the governor's term and the remaining members in the middle of the governor's term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy must be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which the member is appointed.

(5) The governor shall designate the presiding officer. The presiding officer may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid ~~$50~~ *$100* for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their leave, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but must receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law."

Section 3. Section 5-2-301, MCA, is amended to read:

"**5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate for an employee earning $10.33 an hour when the regular session of

the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The hourly rate must be adjusted by any statutorily required pay increase. The president of the senate and the speaker of the house must receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) *(a)* After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, legislators are entitled to a new daily rate for those days during which the legislature is in session. The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost-of-living increase to reflect inflation that is calculated pursuant to ~~2-15-122(5)(a),~~ *subsection (4)(b),* or 5%, whichever is less. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(b) Inflation is calculated by multiplying the current daily rate by the ratio of the PCE for the second quarter of the previous year to the PCE for the second quarter of 1995 and rounding the product to the nearest whole dollar amount.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session.

(8) The department of administration shall work with the legislative services division to offer options to legislators to receive their session salary provided for in subsection (1) over the 2-year legislative term or a portion of the term. The options must be offered to all legislators in order to assist legislators to manage their income over the term. The per diem allowance and mileage as provided in this section, salary during a special session as provided in 5-3-101, and the salary during the interim as provided for in 5-2-302 may not be affected."

(9) For the purposes of this section, "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce.

Section 4. Section 19-20-202, MCA, is amended to read:

"**19-20-202. Per diem and expenses of board members.** The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive ~~$50 per day~~ *compensation as provided in 2-15-122* and travel expenses~~,~~ as provided ~~for~~ in 2-18-501 through 2-18-503~~,~~ for each day in attendance at the meetings of the board or in the execution of duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section must be paid from the expense account of the retirement system."

Section 5. 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~~ *as provided in 2-15-122* 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 6. Section 37-43-201, MCA, is amended to read:

"**37-43-201. Organization -- seal -- compensation of members.** (1) The board shall annually elect a presiding officer and vice presiding officer.

(2) The board must have a seal with the words "Board of Water Well Contractors" engraved on the seal, and the seal must be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of the seal.

(3) Each appointed member of the board who is not a government employee must receive as compensation for the member's services ~~$50 a day~~ *an amount as provided in 2-15-122* for each day actually engaged in the performance of the duties of the office, including time of travel between the member's home and the places at which the member performs duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The members who are employees of the state of Montana may not receive extra compensation for their services as members of the board."

Section 7. Section 53-19-304, MCA, is amended to read:

"**53-19-304. Officers -- meetings -- quorum -- compensation.** (1) The committee shall choose a presiding officer from its members.

(2) The committee shall meet at least four times a year and at other times as determined by the presiding officer or by a majority of the committee.

(3) Seven members of the committee constitute a quorum for the transaction of business.

(4) All members of the committee are entitled to reimbursement of expenses as provided in 2-18-501 through 2-18-503. Members of the committee who are not state employees are also entitled to receive compensation ~~of $50~~ *as provided in 2-15-122* for each day that they are engaged in official business of the committee."

Section 8. Section 87-1-251, MCA, is amended to read:

"**87-1-251. Upland game bird enhancement program -- advisory council.** (1) There is an upland game bird citizens' advisory council consisting of 12 members appointed by the director and serving staggered 4-year terms. The 12 members must include a public member representing each of the department's administrative regions. Council membership must include:

(a) an upland game bird hunter;

(b) a local chamber of commerce representative;

(c) a conservationist;

(d) an upland game bird biologist;

(e) at least two landowners, one of whom must be enrolled in the block management program; and

(f) a senator and a representative from different political parties.

(2) The council shall meet at least once each year but not more than once each month as necessary to:

(a) advise the department on the development and maintenance of a 10-year strategic plan that at a minimum:

(i) defines quantifiable goals, objectives, and performance measurements for the upland game bird enhancement program based on need by administrative region, taking into consideration any biological, recreational, or economic benefit, including the prioritization of at-risk upland game bird species and their associated habitats;

(ii) establishes regional and statewide priorities for the development of upland game bird habitat based on land management needs, sustaining upland game bird populations, and landowner input;

(iii) prioritizes resource allocation, including funding and personnel, in accordance with objectives and goals established pursuant to this subsection (2)(a);

(iv) promotes landowner outreach and relations with both private and public landowners;

(v) provides for the ongoing monitoring of, access to, and signage for upland game bird enhancement projects, as well as the renewal or replacement of expiring projects; and

(vi) develops strategies to ensure the effective release of upland game birds and use of funding for upland game bird releases; and

(b) provide ongoing monitoring of upland game bird enhancement program activities, including but not limited to receipt from the department of an annual:

(i) activity report to evaluate whether objectives, goals, and performance measurements established pursuant to subsection (2)(a) are being met or are expected to be met;

(ii) financial report, providing a summary of revenue and expenditures for the upland game bird enhancement program and any unreserved balance remaining at the end of the fiscal year from fees collected pursuant to 87-1-246; and

(iii) report reviewing whether upland game bird enhancement project contracts are in compliance with 87-1-248 and rules adopted pursuant to 87-1-249.

(3) The council may recommend rules for adoption by the department.

(4) Each member of the council is entitled to receive ~~$50 in~~ compensation *as provided in 2-15-122* and travel expenses~~,~~ as provided ~~for~~ in 2-18-501 through 2-18-503~~,~~ for each day spent on official council business. Council members who conduct official council business in their city of residence are entitled to receive a midday meal allowance as provided ~~for~~ in 2-18-502.

(5) The department shall provide administrative support as necessary to assist the advisory council in its duties pursuant to this section."

Section 9. Coordination instruction. If both House Bill No. 316 and [this act] are passed and approved and if both contain a section that amends 2-15-122, then the sections amending 2-15-122 are void and 2-15-122 must be amended as follows:

"2-15-122. Creation of advisory councils. (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that the official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. The creating authority shall file a record of each council created by it in the office of the governor and the office of the secretary of state in accordance with subsection (9).

(2) Each advisory council created under this section must be known as the ".... advisory council".

(3) The creating authority shall:

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the creating authority; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity, as defined in 2-15-102.

(5) (a) Unless an advisory council member is a full-time salaried officer or employee of this state or of any political subdivision of this state, the member is entitled to be paid in an amount to be determined by the department head, not to exceed ~~$50~~ *$100* for each day in which the member is actually and necessarily engaged in the performance of council duties and to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. ~~The maximum daily pay rate must be adjusted for inflation annually by multiplying the base income of $50 by the ratio of the PCE for the second quarter of the previous year to the PCE for the second quarter of 1995 and rounding th eproduct to the nearest whole dollar amount.~~

(b) Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for

their service as members but are entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year, an advisory council shall elect a presiding officer and other officers that it considers necessary.

(7) Unless otherwise specified by the creating authority, an advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the presiding officer or a majority of its members. An advisory council may ~~not meet outside the city of Helena without the express prior authorization of the creating authority~~ *meet anywhere within the state of Montana or by remote means.*

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c), an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor shall file in the governor's office and in the office of the secretary of state a record of the council created showing:

(a) the council's name, in accordance with subsection (2);

(b) the council's composition;

(c) the appointed members, including names and addresses;

(d) the council's purpose; and

(e) the council's term of existence, in accordance with subsection (10).

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the appointing authority in the manner set forth in subsection (1). If the existence of an advisory council is extended, the appointing authority shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

(11) For the purposes of this section, ~~"PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the survey of current business by the bureau of economic analysis of the U.S. department of commerce~~ *"remote means" includes telephone audio, teleconference, or videoconference.*"

Section 10. Coordination instruction. If both House Bill No. 28 and [this act] are passed and approved and if both contain a section that amends 5-2-301, then [section 3 of this act], amending 5-2-301, is void.

Section 11. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 604

[HB 322]

AN ACT GENERALLY REVISING LAWS RELATED TO STANDING MASTERS; REQUIRING STANDING ORDERS TO BE POSTED ON THE DISTRICT COURT'S OR THE JUDICIAL BRANCH'S WEBSITE; ALLOWING PARTIES TO OBJECT TO A REFERENCE TO A STANDING MASTER; REQUIRING

HEARINGS IF REQUESTED; REQUIRING DISTRICT COURT REVIEW OF STANDING MASTER FINDINGS OF FACT AND CONCLUSIONS OF LAW; PROVIDING QUALIFICATIONS FOR STANDING MASTERS; PROVIDING FOR DISQUALIFICATION AND REMOVAL OF STANDING MASTERS; CLARIFYING THAT STANDING MASTERS ARE STATE EMPLOYEES; AMENDING SECTIONS 3-5-124, 3-5-125, 3-5-126, AND 3-5-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 3-5-124, MCA, is amended to read:

"**3-5-124. Standing masters -- reference -- powers.** (1) A reference to a standing master must be made at the judge's discretion or by standing order of the district court. *All standing orders of reference under this section must be posted in a conspicuous place on the district court's or the judicial branch's website.*

(2) A party may object to a reference to a standing master within 20 days after the date the matter was referred to the standing master but before the first meeting with the standing master. On objection, the district court shall refer the matter to another standing master in the judicial district or return the matter to the active docket of the district court.

~~(2)~~*(3)* (a) The order of reference to the standing master ~~may~~ *must* specify or limit the standing master's powers and ~~may~~ *must* direct the standing master to present *written* findings of fact and ~~conclusions of law upon~~ *conclusions of law on* particular issues *for the consideration of the district court*. Subject to the specifications and limitations stated in the order, the standing master shall regulate all proceedings in ~~every~~ *each* hearing before the standing master and implement measures necessary for the efficient performance of the standing master's duties under the order.

(b) The standing master may:

(i) require the production of evidence ~~upon~~ *on* all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings that are applicable;

(ii) rule ~~upon~~ *on* the admissibility of evidence unless otherwise directed by the order of reference. *The standing master's rulings must be in accordance with Montana law and the Montana Rules of Evidence, as applicable.*~~;~~

(iii) put witnesses on oath and ~~examine them~~ *permit their examination*;

(iv) call the parties to the action and ~~examine them on~~ *permit their examination under* oath; and

(v) issue temporary orders that are subject to review by the district court, ~~upon~~ *on* objection by a party to the action.

(c) The standing master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Montana Rules of Evidence for a court sitting without a jury. Audio and video recordings are acceptable means of record so long as a master recording is properly preserved and can be transcribed for district court and appellate review.

(4) A standing master shall apply all applicable laws and follow the applicable rules of the judicial district in which the matter is filed."

Section 2. Section 3-5-125, MCA, is amended to read:

"**3-5-125. Standing masters -- proceedings -- meetings -- witnesses -- statements of account.** (1) When a reference is made, the clerk shall immediately furnish the standing master with a copy of the order of reference. Unless the order of reference otherwise provides, the standing master shall set a time and place for the first meeting of the parties or their attorneys to be

held within 20 days after ~~the date of the order of reference~~ *the expiration of the objection period in 3-5-124(2)* and shall notify the parties or their attorneys. *The standing master shall have the authority to issue temporary orders before the expiration of the objection period in 3-5-124(2).* The standing master shall proceed with all reasonable diligence *throughout the proceedings*. Either party, on notice to the parties and standing master, may apply to the *district* court for an order requiring the standing master to speed the proceedings and to make the report *of its findings of fact and conclusions of law*. If a party fails to appear at the time and place appointed, the standing master may proceed ex parte or, in the standing master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) The parties may procure the attendance of witnesses before the standing master by the issuance and service of subpoenas as provided in Rule 45 of the Montana Rules of Civil Procedure. If, without adequate excuse, a witness fails to appear or give evidence, the witness may be punished for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45 of the Montana Rules of Civil Procedure.

(3) When matters of accounting are in issue before the standing master, the standing master may prescribe the form in which the accounts must be submitted and may require or receive in evidence a statement by a certified public accountant who is called as a witness. ~~Upon~~ *On* objection of a party to any of the items submitted or ~~upon~~ *on* a showing that the form of statement is insufficient, the standing master may require a different form of statement to be furnished or the accounts or specific items to be proved by oral examination of the accounting parties or ~~upon~~ *on* written interrogatories or in ~~such~~ *any* other manner as the standing master directs."

Section 3. Section 3-5-126, MCA, is amended to read:

"**3-5-126. Standing masters -- findings of fact and ~~conclusions of law recommendations for disposition -- orders~~ *conclusions of law -- order* -- contents and filing -- review -- stipulations as to findings.** (1) Subject to the order of reference, the standing master shall submit findings of fact and ~~conclusions of law~~ *conclusions of law to the clerk of court*, following a hearing ~~upon~~ *on* the matters submitted to the standing master by the order of reference. *If a party requests a hearing on a matter submitted to the standing master, the standing master shall hold a hearing.* When a hearing is not required, the standing master shall submit ~~an order upon~~ *findings of fact, conclusions of law, and a proposed order to the clerk of court on* the matters submitted to the standing master by the order of reference. The standing master shall file the findings *of fact* and ~~conclusions or order~~ *conclusions of law or order* with the clerk of the court and *promptly* serve copies on all parties *in accordance with applicable law*. All contested proceedings before the standing master must be *audio or video* recorded. The standing master shall, at the expense of the district court, file a recording of the proceedings and of the evidence and the original exhibits. *The record of the proceedings before the standing master must be made available to the public to the same extent other records of the district court are available to the public.* The *reasonable* cost of the preparation of a duplicate of the recording is the responsibility of the objecting party. The objecting party shall serve a copy of the duplicate recording on adverse parties ~~at the objecting party's expense~~.

(2) Within 10 days after being served with notice of the filing of the findings *of fact* and ~~conclusions or order~~ *conclusions of law or order*, any party may *file and* serve written specific objections ~~upon the other parties~~, or ~~may~~ apply to the *district* court for an extension ~~to serve~~. ~~Application to the court for action upon the findings and conclusions or order and upon the filing of specific~~

~~objections to the findings and conclusions or order must be by motion and upon notice as prescribed in Rule 6(c) of the Montana Rules of Civil Procedure.~~ The *district* court~~, after a hearing, may~~*, after a hearing, if requested, may* adopt the findings *of fact* and ~~conclusions or order and may~~ *conclusions of law or order and may* modify, reject in whole or in part, receive further evidence, or recommit the ~~findings and conclusions or order~~ *matter to the standing master* with instructions. *If a party seeks to admit further evidence and the request is denied, the party may make an offer of proof with affidavits and additional proposed exhibits.*

(3) ~~The effect of a standing master's report is the same whether or not the parties have consented to the reference, but when~~ *When* the parties stipulate that a standing master's findings of fact are final, only questions of law arising ~~upon~~ *on* the findings *of fact* and ~~conclusions~~ *conclusions of law* may be considered."

Section 4. Appointment of standing masters -- qualifications -- disqualification. (1) A judicial district may appoint or reappoint one or more standing masters for its district with the concurrence of a majority of the judges in the district.

(2) A standing master must be:

(a) admitted to practice law in Montana for at least 3 years prior to the date of appointment;

(b) a member of good standing in the state bar of Montana; and

(c) determined by the appointing judicial district to be competent to perform the duties of the office.

(3) The judicial district shall provide public notice of all vacancies or proposed reappointments in standing master positions.

(4) A standing master shall take the oath required of judges and follow the Montana code of judicial conduct.

(5) An appointed standing master is an employee of the district court under 3-5-901.

(6) A standing master is subject to disqualification from proceeding on a matter on the same grounds as any other judicial officer. On disqualification of a standing master, the district court shall either refer the matter to another standing master in the judicial district or move the case back to its active docket for further proceedings.

Section 5. Section 3-5-901, MCA, is amended to read:

"**3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; ~~and~~

(v) standing masters; and

~~(v)~~*(vi)* other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in 47-1-119, the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in 47-1-119, the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in 47-1-119, the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in 47-1-119, costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in 47-1-119, all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 6. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply to [section 4].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

Approved May 18, 2023

CHAPTER NO. 605

[HB 333]

AN ACT GENERALLY REVISING MOTORIZED RECREATION LAWS; REQUIRING A TRAIL PASS APPLICANT'S STREET ADDRESS; INCREASING FINES FOR NOT FOLLOWING TRAIL PASS LAWS; PROVIDING THAT PORTIONS OF FINES ARE TO BE DEPOSITED IN THE SUMMER MOTORIZED TRAIL RECREATION ACCOUNT; AMENDING SECTIONS 23-2-111, 23-2-112, 23-2-113, 23-2-636, AND 23-2-814, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 23-2-111, MCA, is amended to read:

"**23-2-111. Summer motorized recreation trail pass for residents -- fees -- penalties.** (1) Except as provided in subsection (5) of this section, motorized equipment registered in Montana pursuant to 61-3-321 may not be operated on a summer motorized recreation trail unless a summer motorized recreation trail pass is affixed in a conspicuous place to the motorized equipment.

(2) The cost of a summer motorized recreation trail pass is $20. The trail pass is valid for 2 years and expires on December 31 of the second calendar year.

(3) The trail pass is not transferable. However, if motorized equipment is sold with an affixed trail pass, the trail pass may continue to be used by the purchaser until the pass expires.

(4) Application for the issuance of the trail pass must be made at locations and on forms prescribed by the department. The forms must include but are not limited to:

(a) the applicant's name and permanent *street* address;

(b) a physical description of the motorized equipment; ~~and~~

(c) proof of the motorized equipment's registration in Montana*; and*

(d) the applicant's name and permanent street address, as required in subsection (4)(a), and any other personal identification information, including but not limited to the applicant's phone number, may not be made public but may be used by other state agencies or the Montana university system for the sole purpose of gathering information for user studies that include usage criteria, trends, and growth.

(5) A person renting motorized equipment registered pursuant to 61-3-321 is not required to purchase a trail pass but shall carry proof of rental if operating the motorized equipment on a summer motorized recreation trail.

(6) Money collected by payment of fees under this section must be used as follows:

(a) $2 must be remitted to the vendor who sold the trail pass if the vendor is not the department; and

(b) the remainder must be deposited in the summer motorized recreation trail account established in 23-2-112.

(7) The failure to affix the trail pass as required by this section or the making of false statements in obtaining the trail pass is a misdemeanor, punishable by a fine of ~~not less than $25 or more than $100~~ *$60*. All fines collected under this section must be transmitted to the department of revenue for deposit *of $40 of each $60 fine* in the state general fund *and $20 of each $60 fine in the summer motorized recreation trail account provided for in 23-2-112*"

Section 2. Section 23-2-112, MCA, is amended to read:

"**23-2-112. Summer motorized recreation trail account.** (1) There is a summer motorized recreation trail account in the state special revenue fund established in 17-2-102.

(2) *The following must be deposited in the account:*

(a) ~~Pursuant~~ *pursuant* to 23-2-111,~~,~~ revenue collected from the sale of summer motorized recreation trail passes*; and*

(b) penalties collected pursuant to 23-2-111(7) and 23-2-814(6) ~~must be deposited in the account and~~.

(3) Funds deposited in the account must be used by the department pursuant to *23-2-113 and* ~~23-2-113 and~~ this subsection ~~(2)~~ *(3)*:

(a) up to 5% deposited in the account each year may be used by the department for administrative costs;

(b) $1 from each trail pass sold pursuant to 23-2-111 must be granted for mitigation and eradication of noxious weeds along summer motorized recreation trails; and

(c) the remainder must be granted for designation, maintenance, and improvement of summer motorized recreation trails.

~~(3)~~*(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 3. Section 23-2-113, MCA, is amended to read:

"**23-2-113. Summer motorized recreation trail grant program -- rulemaking.** (1) There is a summer motorized recreation trail grant program by which the department may grant funds deposited in the account established in 23-2-112 to private clubs and organizations for the following purposes:

(a) to mark or sign, maintain, and improve summer motorized recreation trails;

(b) to mitigate and eradicate noxious weeds along summer motorized recreation trails; ~~and~~

(c) to provide motorized safety and ethics education*; and*

(d) to acquire various hand tools and chain saws needed to accomplish trail projects. The grantee shall provide to the department on request an itemized list and receipts for all purchases of hand tools and chain saws made using grant funds.

(2) Entities receiving a grant may use up to 7% of the funds for administrative costs.

~~(2)~~*(3)* The department may require an applicant to provide a 10% match in cash or donated services to be eligible to receive a grant.

~~(3)~~*(4)* In utilizing funds pursuant to this section, the department shall consider the recommendations of the off-highway vehicle advisory committee established pursuant to 23 U.S.C. 206.

~~(4)~~*(5)* After awarding a grant pursuant to this section, the department shall ~~distribute~~*, on request of the grantee, make an initial distribution of* 50% of the funding to the entity receiving the award ~~with the other 50% to be distributed on receipt by the department of expense receipts and proof of completion of the project for which the money is awarded~~*, a distribution of 40% on receipt by the department of expense receipts, and a distribution of the final 10% of the funding on receipt by the department of proof of completion of the project for which the money is awarded*.

~~(5)~~*(6)* The department may adopt rules to implement the provisions of 23-2-110 through 23-2-113."

Section 4. Section 23-2-636, MCA, is amended to read:

"**23-2-636. Winter trail pass -- fees -- penalties.** (1) Except as provided in subsection (4), to be eligible to operate a snowmobile or a dog sled or to use motorized equipment or mechanical transport in snowmobile areas groomed with a grant or funding assistance awarded by the department, a person shall first purchase a winter trail pass for:

(a) $20, if the snowmobile or motorized equipment is registered in Montana pursuant to 61-3-321 or the person operating the dog sled or mechanical transport is a resident as determined under 1-1-215. A trail pass purchased pursuant to this subsection (1)(a) is valid for up to 2 years from the date of purchase but no later than June 30 of the second year.

(b) $35, if the snowmobile or motorized equipment is exempt from registration in Montana pursuant to 61-3-321 or the person operating the dog sled or mechanical transport is not a resident as determined under 1-1-215. A trail pass purchased pursuant to this subsection (1)(b) is valid for up to 1 year from the date of purchase but no later than June 30 of the following year.

(2) The trail pass must be affixed in a conspicuous place to each snowmobile, dog sled, motorized equipment, or mechanical transport used. A trail pass is not transferable between a snowmobile, dog sled, motorized equipment, or mechanical transport. If a snowmobile is sold with an affixed trail pass, the trail pass may continue to be used by the purchaser of the snowmobile until it expires.

(3) *(a)* Application for the issuance of the trail pass must be made at locations and on forms prescribed by the department. *The forms must include but are not limited to the applicant's name and permanent street address.*

(b) The applicant's name and permanent street address, as required in subsection (3)(a), and any other personal identification information, including but not limited to the applicant's phone number, may not be made public but may be used by other state agencies or the Montana university system for the sole purpose of gathering information for user studies that include usage criteria, trends, and growth.

(4) The purchase of a trail pass is not required for:

(a) a person renting a snowmobile registered pursuant to 61-3-321(11)(c), but the person shall carry proof of rental if operating the snowmobile in a snowmobile area that otherwise requires a trail pass pursuant to subsection (1);

(b) a person participating in a sanctioned dog sled race; or

(c) motorized equipment exempt from registration in Montana pursuant to 61-3-321(14).

(5) Except for 50 cents, which is a search and rescue surcharge deposited pursuant to 87-1-601, money collected by payment of fees under this section must be deposited in the state special revenue fund to the credit of the department and used as follows:

(a) $2 must be remitted to the vendor who sold the trail pass if the vendor is not the department;

(b) $1.50 must be used for the enforcement of snowmobile laws pursuant to this part; and

(c) the remainder must be used by the department for the statewide snowmobile trail grooming program.

(6) The failure to affix the trail pass as required by this section or the making of false statements in obtaining the trail pass is a misdemeanor, punishable by a fine of not less than ~~$25~~ *$40* or more than $100.

(7) To be eligible for a trail pass pursuant to this section, an all-terrain vehicle must have a wheel base of less than 50 inches in width and be equipped with tracks instead of wheels while operating on a groomed snowmobile trail administered by the department.

(8) For the purposes of this section:

(a) "motorized equipment" means any motorized equipment allowed by a snowmobile area operator; and

(b) "snowmobile" includes snowmobiles used for demonstration purposes by snowmobile dealers."

Section 5. Section 23-2-814, MCA, is amended to read:

"**23-2-814. Nonresident temporary-use permits -- use of fees.** (1) Except as provided in 23-2-802, an off-highway vehicle that is owned by a nonresident may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and on forms prescribed by the department ~~of fish, wildlife, and parks~~. The forms must include but are not limited to:

(i) the applicant's name and permanent *street* address;

(ii) the make, model, year, and serial number of the off-highway vehicle; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) The applicant's name and permanent street address, as required in subsection (2)(a), and any other personal identification information, including but not limited to the applicant's phone number, may not be made public but may be used by other state agencies or the Montana university system for the sole purpose of gathering information for user studies that include usage criteria, trends, and growth.

~~(b)~~*(c)* Upon submission of the application and a fee of $35, of which $2 is a search and rescue surcharge, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of title may not be issued.

(5) (a) Except as provided in subsection (5)(b), money collected by payment of fees under this section must be deposited in the state special revenue fund to the credit of the department ~~of fish, wildlife, and parks~~ and used as follows:

(i) $27.50 must be expended to maintain off-highway vehicle trails;

(ii) $2.50 must be used by the department for enforcement of off-highway vehicle laws pursuant to 23-2-806;

(iii) $2 must be remitted to the license agent who sold the nonresident temporary-use permit; and

(iv) $1 must be used by the department to mitigate and eradicate noxious weeds along off-highway vehicle trails.

(b) The $2 search and rescue surcharge must be deposited in the account established in 10-3-801 for use as provided in that section.

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of ~~not less than $25 or more than $100~~ *$60*. All fines collected under this section must be transmitted to the department of revenue for deposit *of $40 of each $60 fine* in the state general fund *and $20 of each $60 fine in the summer motorized recreation trail account provided for in 23-2-112*."

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Effective date. [This act] is effective January 1, 2024.

Approved May 18, 2023

CHAPTER NO. 606

[HB 346]

AN ACT REVISING THE TRIBAL COMPUTER PROGRAMMING BOOST SCHOLARSHIP PROGRAM; CONSOLIDATING ADMINISTRATION OF THE PROGRAM AT THE DEPARTMENT OF LABOR AND INDUSTRY; EXPANDING THE TEACHER PROFESSIONAL DEVELOPMENT COMPONENT OF THE PROGRAM TO INCLUDE ELEMENTARY AND MIDDLE SCHOOL TEACHERS; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-7-106, MCA, is amended to read:

"**20-7-106. (Temporary) Tribal computer programming boost scholarship program.** (1) There is a tribal computer programming boost scholarship program *consisting of two components administered by the department of labor and industry*. The purpose of the program is to:

(a) support the development of computer programming courses at high schools located on Indian reservations in the state;

(b) increase interest among Indian students in pursuing computer programming and other technology-related careers; and

(c) enhance technology-related economic development in Indian country.

(2) (a) The ~~office of public instruction~~ *department* shall administer the teacher professional development component of the program and develop criteria to determine scholarship awardees.

(b) Scholarships under the program must be used to support the professional development of ~~high~~ *elementary and secondary* school teachers responsible for technology instruction and currently employed or with a contract for employment in a ~~high~~ school located on an Indian reservation in the state or in a ~~high~~ school serving members of the Little Shell Chippewa tribe.

(c) The scholarships may be for up to $2,000 and may only be used to defray the expenses of professional development for a teacher that results in the creation or refinement of world-class computer programming courses offered at the teacher's ~~high~~ school. The professional development must include coursework or other activities taken at a unit of the Montana university system or a community college or tribal college located in the state.

(3) (a) The department ~~of labor and industry~~ shall administer the incentivized student training component of the program and develop criteria to award grants to organizations to implement incentivized student training programs.

(b) An organization awarded a grant shall:

(i) deliver a self-paced computer coding training program to eligible youth in tribal communities to prepare students for in-demand technology occupations;

(ii) incentivize successful completion of training milestones by providing cash or other equivalent stipends to eligible youth. Eligible youth may be paid stipends for time spent receiving instruction and for participating in unpaid work-based learning opportunities.

(iii) work with industry partners to develop youth apprenticeship and registered apprenticeship opportunities, internships, and other programs to be made available to eligible youth who complete the training program; and

(iv) provide eligible youth with information and exposure to computer science-related career and job opportunities, including the degrees or credentials required to be qualified for various opportunities, locations where the degrees or credentials may be obtained, and what secondary and postsecondary education coursework would benefit a participant who would like to pursue a computer science-related career.

(c) The department of labor and industry shall utilize available federal workforce funds and may accept contributions and donations from individuals and industry partners for the purpose of this subsection (3).

(d) For the purposes of this subsection (3), the term "eligible youth" has the same meaning as in section 3102 of the Workforce Innovation and Opportunity Act, 29 U.S.C. 32.

(4) The education interim committee established in 5-5-224 shall include the monitoring of this program in its duties for the ~~2021 and 2022~~ *2023 and 2024* interim and may request reports from ~~the office of public instruction and~~ the department of labor and industry on the implementation of the program. The education interim committee shall make available any information it acquires on the program to the state-tribal relations committee established in 5-5-229 and is encouraged to collaborate with the state-tribal relations committee in its monitoring of the program and on any modifications to the program. (Terminates June 30, 2025--sec. 6, Ch. 416, L. 2021.)"

Section 2. Appropriation. There is appropriated $48,000 from the general fund to the department of labor and industry for each fiscal year of the biennium beginning July 1, 2023, for the purpose of the teacher professional development component of the tribal computer programming boost scholarship program established in 20-7-106. The department shall provide funding for at least two high school teachers and one K-8 school teacher currently employed or with a contract for employment in a school located on each of the seven Indian reservations in Montana and in a school or schools serving members of the Little Shell Chippewa tribe.

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

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

Approved May 18, 2023

CHAPTER NO. 607

[HB 348]

AN ACT REVISING LAWS RELATED TO STATE EMPLOYEE DIRECTORY INFORMATION; REQUIRING STATE AGENCIES TO POST EMPLOYEE DIRECTORIES; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. State agency employee directory requirement. (1) Each state agency shall post an employee directory on the agency's website. The link to the directory must be on the main landing page of the agency's website.

(2) (a) Except as provided in subsection (b), the directory must include the name, title, and a direct phone number and e-mail address issued by the agency for each agency employee whose job responsibilities include regular interactions with the public.

(b) Department heads may exempt from the requirements of subsection (2)(a) persons in safety-sensitive positions.

(3) The directory page must include an organizational chart for the department so members of the public know which department or individual to contact.

(4) The agency shall perform regular checks, at least semiannually, of the directory to ensure that the information is current and accurate. The date of the last update must be posted on the directory page.

Section 2. 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 3. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 608

[HB 352]

AN ACT ESTABLISHING EARLY LITERACY TARGETED INTERVENTIONS; PROVIDING LEGISLATIVE FINDINGS, PURPOSE, AND INTENT; PROVIDING DEFINITIONS; ESTABLISHING PARAMETERS AND FUNDING FOR THREE VOLUNTARY EARLY LITERACY TARGETED INTERVENTION PROGRAMS; ESTABLISHING DUTIES OF THE BOARD OF PUBLIC EDUCATION AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION IN ADMINISTERING THE PROGRAMS; ESTABLISHING REPORTING REQUIREMENTS FOR PARTICIPATING SCHOOL DISTRICTS AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 20-5-101, 20-7-117, AND 20-9-311, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Findings -- purpose -- legislative intent. (1) The legislature finds that the ability to read at or above grade level is essential for educational success. The legislature also finds that too many Montana children are not reading proficient at the end of 3rd grade.

(2) The purposes of this bill are to:

(a) provide parents with voluntary early literacy interventions for their children;

(b) increase the number of children who are reading proficient at the end of 3rd grade and in so doing help those children develop their full educational potential pursuant to Article X, section 1(1), of the Montana constitution; and

(c) foster a strong economic return for the state on early literacy investment through enhancing Montana's skilled workforce and decreasing future reliance on social programs and the criminal justice system.

(3) The legislature intends that the board of public education, the office of public instruction, and the boards of trustees of school districts collaborate to implement [sections 1 through 4] and achieve the purposes under subsection (2).

(4) The legislature further intends that the board of public education, the office of public instruction, and the boards of trustees of school districts collaborate on an ongoing basis to gather, analyze, and make available outcome data and continually refine the interventions to increase the efficacy and efficiency of each intervention.

Section 2. Definitions. As used in [sections 1 through 4], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Early literacy targeted intervention" or "intervention" means, as further described in [section 3], any of the following:

(a) a classroom-based program;

(b) a home-based program; or

(c) a jumpstart program.

(2) "Eligible child" means a child who is determined through the evaluation methodology selected by the board of public education pursuant to [section 3] to be below a trajectory leading to reading proficiency at the end of 3rd grade.

(3) "Evaluation methodology" means a research-based methodology, instrument, or assessment selected by the board of public education to determine, based on a child's age or grade level, whether the child is above, at, or below a developmental trajectory leading to reading proficiency on completion of 3rd grade.

(4) "Trustees" means the board of trustees of an elementary or K-12 school district.

Section 3. Early literacy targeted interventions. (1) The trustees of a school district may provide eligible children with any of the interventions described in this section. [Sections 1 through 4] may not be construed to limit the duty or authority of trustees to provide educational opportunities described elsewhere in this title.

(2) The board of public education shall determine an evaluation methodology to determine, based on a child's age or grade level, whether the child is above, at, or below a developmental trajectory leading to reading proficiency on completion of 3rd grade. The evaluation must be:

(a) developmentally appropriate;

(b) research-based;

(c) cost-effective; and

(d) if possible, aligned with formative assessments that inform instruction in the classroom-based program and the jumpstart program.

(3) The superintendent of public instruction shall provide school districts with access to and technical support for the evaluation methodology, instrument, or assessment determined by the board of public education.

(4) A child may not be evaluated for the purposes of [sections 1 through 4] unless requested by the child's parent or guardian. The trustees may administer the evaluation methodology in April, May, or June to a child who will be 4 years of age or older on or before the following September 10 and who has not yet entered 3rd grade. A child who is evaluated to be below trajectory

for 3rd-grade reading proficiency for the child's age or grade level is an eligible child for the subsequent school year.

(5) (a) For an eligible child who is 4 years of age or older on or before September 10 of the year in which the child is to participate in the program and who is not entering and who has not completed kindergarten, the trustees may offer a classroom-based program, which may be a half-time or full-time program. A full-time program must allow a parent or guardian to enroll the child half-time.

(b) The classroom-based program must align with developmentally appropriate early education learning standards as determined by the board of public education. The standards must include a requirement for ongoing evaluation of student progress used to tailor instruction to specific student needs.

(6) (a) For an eligible child who is 4 years of age or older on or before September 10 of the year in which the child is to participate in the program and who has not yet completed 2nd grade, the trustees may offer a home-based program.

(b) The home-based program must be selected by the board of public education and must:

(i) be operated by a nonprofit entity;

(ii) be research-based and proven effective at developing early literacy skills in populations at risk of not being reading proficient at the end of 3rd grade;

(iii) foster parental engagement; and

(iv) have a cost of no more than $1,000 a year for each child.

(c) The superintendent of public instruction shall provide school districts with access to and technical support for the home-based early literacy program.

(7) (a) For an eligible child who is 5 years of age or older on or before September 10 of the year in which the child is to participate in the program and who has not yet completed 3rd grade, the trustees may offer a jumpstart program.

(b) The jumpstart program must:

(i) take place during the time between the end of one school calendar year and the start of the next school calendar year, as determined by the trustees, preceding a child's entry into kindergarten, 1st grade, 2nd grade, or 3rd grade;

(ii) be at least 4 weeks in duration and provide at least 120 instructional hours;

(iii) be aligned to a framework determined by the board of public education;

(iv) be designed in a manner to increase the likelihood of a child being evaluated at the end of the ensuing school year to be at or above a trajectory leading to reading proficiency at the end of 3rd grade.

Section 4. Early literacy targeted interventions -- funding -- reporting. (1) An eligible child participating in a classroom-based program pursuant to [section 3(5)] must be included in enrollment counts for the purpose of ANB calculations in the manner described in 20-9-311.

(2) The superintendent of public instruction shall pay for the costs for an eligible child participating in a home-based program pursuant to [section 3(6)] from funds appropriated for this purpose. The cost for each child may not exceed $1,000 a year. If the annual appropriation for this program is not sufficient to fully fund all eligible children participating in the home-based program, the superintendent shall limit participation on a first-come, first-served basis.

(3) An eligible child participating in a jumpstart program pursuant to [section 3(7)] must be counted as quarter-time enrollment for the purpose of ANB calculations pursuant to 20-9-311.

(4) Trustees offering an early literacy targeted intervention shall closely monitor the program and report annually to the superintendent of public instruction on the efficacy of the program no later than July 15. The superintendent shall collaborate with trustees in maximizing the efficiency of fulfilling this reporting requirement. The report must include anonymized information on student progress, including the student's performance on:

(a) the evaluation methodology that led to eligibility for the program;

(b) any formative assessments administered;

(c) if administered, the evaluation methodology at the end of the school year in which intervention was provided; and

(d) any statewide reading assessments administered in grades 4 through 6.

(5) Pursuant to 20-7-104, the superintendent of public instruction shall monitor early literacy targeted interventions and gather data to evaluate the efficacy of the interventions while protecting the privacy rights of students and families. The superintendent shall report, in accordance with 5-11-210, to the education interim committee and the education interim budget committee no later than September 1 annually. The report must contain a comparison analysis by intervention type, including no intervention, and must include:

(a) the number of participating and nonparticipating children and districts;

(b) longitudinal data displaying the proficiency level of participating and nonparticipating children at each grade level following participation in an intervention;

(c) at a time when the data is available, long-term outcome data for participants and nonparticipants, including but not limited to:

(i) assessment data in 8th grade and high school;

(ii) high school graduation rates; and

(iii) postsecondary participation rates; and

(d) a list of schools offering one or more targeted interventions and a list of the matched comparable nonparticipating schools that on the most recent 4th grade statewide reading assessment:

(i) had 75% or more of its students score at proficient or above; or

(ii) improved the percentage of students scoring at proficient or above by 10 or more percentage points.

Section 5. 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) 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) *(a)* The trustees may at their discretion assign and admit a child to a school in the district who is under 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.

(b) As used in this subsection, "exceptional circumstances" means any of the following:

(i) the child is being admitted into a preschool program established by the trustees pursuant to 20-7-117;

(ii) the child is determined by the trustees to be ready for kindergarten and the child's parents have requested early entry into the district's regular 1-year kindergarten program;

(iii) the child is being admitted into an early literacy targeted intervention classroom or jumpstart program pursuant to [sections 1 through 4]; or

(iv) the adult is 19 years of age or older and in the trustees' determination would benefit from educational programs offered by a school of the district.

(c) The admittance of an individual under this subsection (3) does not in and of itself impact the ANB calculations governed by 20-9-311.

(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) The trustees shall assign and admit a child whose parent or guardian is being relocated to Montana under military orders to a school in the district and allow the child to preliminarily enroll in classes and apply for programs offered by the district prior to arrival and establishing residency.

(6) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title.

(7) 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 6. Section 20-7-117, MCA, is amended to read:

"**20-7-117. Kindergarten and preschool programs.** (1) The trustees of an elementary district shall establish or make available a kindergarten program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or who have been ~~enrolled by special permission of~~ *admitted through the exceptional circumstances provision under 20-5-101 by* the board of trustees. The kindergarten program, which the trustees may designate as either a half-time or full-time program, must be an integral part of the elementary school and must be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached 5 years of age on or before September 10 of the school year covered by the calculation or have been ~~enrolled by special permission of~~ *admitted to the district's kindergarten program by* the board of trustees *through the exceptional circumstances provision under 20-5-101*. A kindergarten program must meet the minimum aggregate hour requirements established in 20-1-301. A kindergarten program that is designated as a full-time program must allow a parent, guardian, or other person who is responsible for the enrollment of a child in school, as provided in 20-5-102, to enroll the child half-time.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When preschool programs are established, they must be an integral part of the elementary school and must be governed accordingly. Financing of preschool programs may not be supported by money available from state equalization aid.

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

(a) "Kindergarten program" means a half-time or full-time 1-year program immediately preceding a child's entry into 1st grade with curriculum and

instruction selected by the board of trustees and aligned to the content standards established by the board of public education.

(b) "Preschool program" means a half-time or full-time program to prepare children for entry into kindergarten and governed by standards adopted by the board of public education."

Section 7. Section 20-9-311, MCA, is amended to read:

"**20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging.** (1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on the first Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the student has demonstrated proficiency.

(e) ~~A~~*(i) Except as provided in subsection (4)(e)(ii), a* pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(ii) A pupil who participates in a jumpstart program under [sections 1 through 4] may be counted as up to 1 1/4 enrollment for ANB purposes. A district shall add one-quarter enrollment for a pupil who participated in an early literacy jumpstart program to the pupil's regular enrollment count under

this subsection (4) in both the October and February enrollment counts following the student's participation in the jumpstart program.

(5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) (a) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(b) Except as provided in subsection (7)(c), a pupil who has reached 19 years of age by September 10 of the school year may not be included in the ANB calculations.

(c) A pupil with disabilities who is over 19 years of age and has not yet reached 21 years of age by September 10 of the school year and who is receiving special education services from a school district pursuant to 20-7-411(4)(a) may be included in the ANB calculations if:

(i) the student has not graduated;

(ii) the student is eligible for special education services and is likely to be eligible for adult services for individuals with developmental disabilities due to the significance of the student's disability; and

(iii) the student's individualized education program has identified transition goals that focus on preparation for living and working in the community following high school graduation since age 16 or the student's disability has increased in significance after age 16.

(d) A school district providing special education services pursuant to subsection (7)(c) is encouraged to collaborate with agencies and programs that serve adults with developmental disabilities in meeting the goals of a student's transition plan.

(8) The average number belonging of the regularly enrolled pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district, except that:

(a) the ANB is calculated as a separate budget unit when:

(i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school

if they were transported to another school, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) when a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) when a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) when a school has been designated as nonaccredited by the board of public education because of failure to meet the board of public education's assurance and performance standards, the regularly enrolled pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by

the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending the Montana youth challenge program or a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment.

(13) (a) A district may, for ANB purposes, include in the October and February enrollment counts an individual who is otherwise eligible under this title and who during the prior school year:

(i) resided in the district;

(ii) was not enrolled in the district or was not enrolled full time; and

(iii) completed an extracurricular activity with a duration of at least 6 weeks.

(b) (i) Except as provided in subsection (13)(b)(ii), each completed extracurricular activity under subsection (13)(a) may be counted as one-sixteenth enrollment for the individual, but under this subsection (13) the individual may not be counted as more than one full-time enrollment for ANB purposes.

(ii) Each completed extracurricular activity lasting longer than 18 weeks may be counted as one-eighth enrollment.

(c) For the purposes of this section, "extracurricular activity" means:

(i) a sport or activity sanctioned by an organization having jurisdiction over interscholastic activities, contests, and tournaments;

(ii) an approved career and technical student organization, pursuant to 20-7-306; or

(iii) a school theater production.

(14) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE

budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (14)(a) and then combined.

(15) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (15)(a) by three."

Section 8. Appropriation. (1) There is appropriated $1.5 million from the state general fund to the office of public instruction for the fiscal year beginning July 1, 2024.

(2) The money must be used for the per-student costs of the home-based early literacy program pursuant to [sections 1 through 4].

(3) The legislature intends that the appropriation in this section be considered part of the ongoing base for the next legislative session.

Section 9. Transition. (1) The board of public education, the office of public instruction, and the boards of trustees of school districts shall collaborate and prepare for the full implementation of [sections 1 through 4] in the school year beginning July 1, 2024. The legislature intends that the evaluation methodology be available for administration in the spring of 2024 to determine child eligibility.

(2) The legislature intends that school districts operating multiyear kindergarten programs in the school year beginning July 1, 2023, plan for the transition to early literacy targeted intervention programs under [sections 1 through 4] for the school year beginning July 1, 2024.

Section 10. 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 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Sections 5 through 7] are effective July 1, 2024.

Approved May 18, 2023

CHAPTER NO. 609

[HB 358]

AN ACT REVISING PROPERTY MANAGER LICENSE LAWS; EXEMPTING FROM THE PROPERTY MANAGER LICENSE REQUIREMENT OWNERS OF REAL ESTATE, RELATED OWNERS, AND ENTITIES OWNED BY RELATED OWNERS; ELIMINATING THE EXEMPTION FOR PERSONS ACTING AS MANAGERS OF CERTAIN GOVERNMENT-SUBSIDIZED HOUSING; AMENDING SECTION 37-51-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-51-602, MCA, is amended to read:

"**37-51-602. Exemptions from requirement of property manager license.** (1) ~~The~~ *In addition to the exemptions in 37-51-103, the* property manager licensing provisions of this chapter do not apply to:

(a) an owner of a business entity that owns the property;

(b) an owner of a business entity that manages property for an owner that is exempt under subsection (1)(a). However, all owners of the business entity that owns the property and all owners of the business entity that manages the property must be relatives as provided in subsection (1)(c). For purposes of subsections (1)(a) and (1)(b), an owner is a person who is a:

(i) sole proprietor;

(ii) managing member of a limited liability company;

(iii) shareholder of a corporation; or

(iv) partner in a partnership.

~~(a)~~*(c)* a relative of the owner of the real estate, defined as follows:

~~(i) a son or daughter of the property owner or a descendant of either;~~

~~(ii) a stepson or stepdaughter of the property owner;~~

~~(iii) a brother, sister, stepbrother, or stepsister of the property owner;~~

~~(iv) the father or mother of the property owner or the ancestor of either;~~

~~(v) a stepfather or stepmother of the property owner;~~

~~(vi) a son or daughter of a brother or sister of the property owner;~~

~~(vii) a brother or sister of the father or mother of the property owner;~~

~~(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or~~

~~(ix) the spouse of the property owner;~~

(i) the spouse of the property owner; or

(ii) the child, descendant of a child, sibling, parent, niece, nephew, aunt, or uncle of either the property owner or the spouse of the property owner.

~~(b)~~*(d)* a person who leases no more than four residential real estate units;

~~(c)~~*(e)* a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

~~(d)~~*(f)* an attorney at law in the performance of duties as an attorney;

~~(e)~~*(g)* a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

~~(f)~~*(h)* an officer of the state or any of its political subdivisions in the conduct of official duties;

~~(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;~~

~~(h)~~*(i)* a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;

~~(i)~~*(j)* a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

~~(j)~~*(k)* a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under a supervising broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson and without holding a separate property manager's license."

Section 2. Coordination instruction. If both Senate Bill No. 455 and [this act] are passed and approved and if Senate Bill No. 455 repeals 37-51-602, then [section 1 of this act] terminates September 30, 2023, and [section 4 of Senate Bill No. 455] must be amended as follows:

Section 4. Exemptions from requirement of property manager license. (1) The property manager licensing provisions of [sections 1 through 8] do not apply to:

(a) an owner of a business entity that owns the property;

(b) an owner of a business entity that manages the property for an owner that is exempt under subsection (1)(a). However, all owners of the business entity that owns the property and all owners of the business entity that manages the property must be relatives as provided in subsections (1)(c) or (1)(d).

~~(a)~~*(c)* the spouse of the property owner;

~~(b)~~*(d)* the child, descendant of a child, sibling, parent, niece, nephew, aunt, or uncle of either the property owner or the spouse of the property owner;

~~(c)~~*(e)* a person who leases no more than four residential real estate units;

~~(d)~~*(f)* a person acting as attorney-in-fact under a power of attorney;

~~(e)~~*(g)* an attorney at law in the performance of duties as an attorney;

~~(f)~~*(h)* a person acting pursuant to a court order or a trustee;

~~(g)~~*(i)* an officer of the state or a political subdivision in the conduct of official duties;

~~(h) a person acting as a manager of a housing complex for low-income individuals subsidized by any government agency or political subdivision of the United States;~~

~~(i)~~*(j)* a person who receives reduced rent or salary, unless that person holds signatory authority on the trust account;

~~(j)~~*(k)* a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

~~(k)~~*(l)* a person employed on a salaried basis by only one person.

(2) A broker or salesperson licensed under Title 37, chapter 51, may act as a property manager. A salesperson may not act as a property manager without a supervising broker.

(3) For the purposes of subsections (1)(a) and (1)(b), "owner" means a person who is a:

(a) sole proprietor;

(b) managing member of a limited liability company;

(c) shareholder of a corporation; or

(d) partner in a partnership."

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

Approved May 18, 2023

CHAPTER NO. 610

[HB 360]

AN ACT CLARIFYING THAT COUNTIES MAY ELECT COMMISSIONERS BY DISTRICT IF THE COUNTY HAS A COMMISSION FORM OF GOVERNMENT; AND AMENDING SECTION 7-3-412, MCA.

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

Section 1. Section 7-3-412, MCA, is amended to read:

"**7-3-412. Selection of commission members.** The commission ~~shall~~ *must* be *elected by one of the following methods*:

(1) elected at large;

(2) elected by *the qualified electors residing in the* districts in which candidates ~~must~~ reside and which are apportioned by population; *or*

~~(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or~~

~~(4)~~*(3)* elected by ~~any combination of districts~~ *the qualified electors voting at large for candidates who reside in each district*, ~~in which candidates must reside and~~ which are apportioned by population~~, and at large~~."

Approved May 18, 2023

CHAPTER NO. 611

[HB 364]

AN ACT REVISING THE SANITATION IN SUBDIVISIONS ACT APPLICATION REVIEW PROCESS; ALLOWING AN INDEPENDENT REVIEWER TO CONDUCT SUBDIVISION REVIEWS UNDER CERTAIN CIRCUMSTANCES; ESTABLISHING TRIGGERS FOR INDEPENDENT REVIEWS; REQUIRING REPORTING TO THE ENVIRONMENTAL QUALITY COUNCIL; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO DEVELOP A CURRICULUM AND EXAMINATION TO CERTIFY INDEPENDENT REVIEWERS; REQUIRING REFUNDS OF SUBDIVISION FEES FOR DEADLINE EXTENSIONS REQUESTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 75-6-121, 76-4-102, 76-4-104, 76-4-105, 76-4-114, 76-4-115, 76-4-116, AND 76-4-127 MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 75-6-121, MCA, is amended to read:

"**75-6-121. Delegation of review of small public water and sewer construction.** (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department ~~may~~ *shall* delegate to the division of local government *the* review of:

(a) small public water and sewer systems; and

(b) extensions or alterations of existing public water and sewer systems ~~that involve 50 or fewer connections~~.

(2) The department ~~may~~ *shall* adopt rules regarding the delegation of review authority to divisions of local government.

(3) A division of local government conducting a review under this section:

(a) must receive 90% of the review fee, and the department must receive the remaining 10% of the review fee; and

(b) shall complete documents necessary to complete the review and to comply with:

(i) the Montana Environmental Policy Act provided for in Title 75, chapter 1, parts 1 through 3;

(ii) real property takings requirements in accordance with Title 70; and

(iii) determinations of nondegredation and nonsignificance as required in Title 75, chapter 5."

Section 2. Section 76-4-102, MCA, is amended to read:

"**76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate county water and/or sewer district facilities" means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.

(2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

(3) "Board" means the board of environmental review.

(4) "Certifying authority" means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under 76-4-104(6).

(5) "Department" means the department of environmental quality.

(6) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

(7) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.

(8) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(9) "Independent reviewer" means a registered sanitarian or registered professional engineer that the department has certified to conduct a review under 76-4-104.

~~(9)~~*(10)* "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.

~~(10)~~*(11)* "Mixing zone" has the meaning provided in 75-5-103.

~~(11)~~*(12)* (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)~~*(13)* (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under this chapter after October 1, 2013.

(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

~~(13)~~*(14)* "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

~~(14)~~*(15)* "Public water supply system" has the meaning provided in 75-6-102.

~~(15)~~*(16)* "Regional authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

~~(16)~~*(17)* "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

~~(17)~~*(18)* "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

~~(18)~~*(19)* "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

~~(19)~~*(20)* "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.

~~(20)~~*(21)* "Sewage" has the meaning provided in 75-5-103.

~~(21)~~*(22)* "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.

~~(22)~~*(23)* "Solid waste" has the meaning provided in 75-10-103.

~~(23)~~*(24)* "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for recreational camping vehicles or mobile homes.

~~(24)~~*(25)* "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.

~~(25)~~*(26)* "Well isolation zone" means the area within a 100-foot radius of a water well."

Section 3. Section 76-4-104, MCA, is amended to read:

"**76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

(a) size of lots;

(b) contour of land;

(c) porosity of soil;

(d) ground water level;

(e) distance from lakes, streams, and wells;

(f) type and construction of private water and sewage facilities; and

(g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified by the department to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) *(a)* The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department, ~~or~~ *local* board of health*, or independent reviewer* is competent to review the subdivisions as described in subsection (3).

(b) On or before December 31, 2023, the department shall develop procedures for certification of prequalified independent reviewers and develop a training curriculum to ensure compliance with this part.

(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 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, except that the rules must provide a basis for not requiring storm water review under this part for parcels 5 acres and larger on which the total impervious area does not and will not exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75, chapter 5, or rules adopted pursuant to Title 75, chapter 5.

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the proposed drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the proposed subdivision where the proposed drainfield or proposed well is located.

(i) A proposed drainfield mixing zone or a proposed well isolation zone for an individual water system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(ii) This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the subdivision application under this chapter. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(m) eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under the provisions of 76-4-127.

(7) The requirements of subsection (6)(i) regarding proposed drainfield mixing zones and proposed well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after October 1, 2021, except as provided in subsections (6)(i)(i) and (6)(i)(ii).

(8) The department shall:

(a) conduct a biennial review of experimental wastewater system components that have been granted a waiver or deviation as provided in subsection (6)(j);

(b) utilize relevant analysis of wastewater system components approved in other states and data from peer-reviewed third-party studies to conduct the review provided in subsection (8)(a);

(c) propose those experimental wastewater system components that meet the purposes and provisions of this part for adoption into the rules pursuant to this section; and

(d) report to the local government interim committee biennially, in accordance with 5-11-210, the number and type of experimental wastewater system components reviewed and the number and type of system components approved and provide written findings to explain why a system component was reviewed but not approved.

(9) 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.

(10) 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.

(11) 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.

(12) (a) The rules must provide for the review of subdivisions consistent with 76-4-114 by an independent reviewer if the department certifies under subsection (4) of this section that the independent reviewer is competent to conduct the review.

(b) (i) Except as provided in subsection (12)(b)(ii), an independent reviewer may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) An independent reviewer 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 system is required.

(c) If 110 or more new files are submitted to the department for review in any one month, the department shall assign applications received in that month to independent reviewers unless an independent reviewer is not available.

(d) The department shall reimburse independent reviewers at the same rate the department reimburses local departments or local boards of health certified under subsection (3).

(13) Prior to being assigned an application for review, an independent reviewer shall identify any conflict of interest related to the project under potential review. If the independent reviewer identifies a conflict of interest, the application for review must be assigned to a different independent reviewer.

(14) An independent reviewer acting under the requirements of this chapter shall comply with the provisions of Title 2, chapter 6, for public information requests.

(15) An independent reviewer conducting reviews under this section shall complete documents necessary to complete the review and to comply with:

(a) the Montana Environmental Policy Act provided for in Title 75, chapter 1, parts 1 through 3; and

(b) real property takings requirements in accordance with Title 70."

Section 4. Section 76-4-105, MCA, is amended to read:

"**76-4-105. Subdivision fees -- subdivision program funding.** (1) The department shall adopt rules setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

(a) *the* 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) (a) Except as provided for in subsection (2)(b), for extensions requested by the department of the deadlines in 76-4-114, the department shall refund the applicant:

(i) for the first extension, 25% of the fees;

(ii) for the second extension, 50% of the fees; and

(iii) for the third extension, the remaining fees paid.

(b) Reimbursement is not required for extensions:

(i) requested by the applicant under 76-4-114(4); or

(ii) necessary under 76-4-114(5) to obtain the required information in 76-4-115(2).

(c) A reimbursement provided for in this subsection (2) applies only to the portions of the application review being completed by the department.

~~(2)~~*(3)* The department shall adopt rules to determine the distribution of fees to the local reviewing authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108.

~~(3)~~*(4)* The local reviewing authority may establish a fee to review applications, conduct site visits, and review applicable exemptions under this chapter. The fee must be paid directly to the local reviewing authority and may not exceed the local reviewing authority's actual cost that is not otherwise reimbursed by the department from fees adopted pursuant to this section."

Section 5. Section 76-4-114, MCA, is amended to read:

"**76-4-114. 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 *or independent reviewer* 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 *or independent reviewer* 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 *or independent reviewer*. 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 *or independent reviewer* to request additional information during the review process.

(c) (i) After the reviewing authority *or independent reviewer* notifies the applicant that the application contains all of the required elements as provided by subsection (3)(b), the reviewing authority *or independent reviewer* shall make a final decision or a recommendation on the application. Except as provided by subsection (4), the reviewing authority *or independent reviewer* 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~~ *local* board of health, *or independent reviewer*. If the department receives a recommendation for approval of the subdivision from a local department, ~~or~~ *local* board of health, *or independent reviewer,* 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 *or independent reviewer* denies the application, the reviewing authority *or independent reviewer* shall identify the deficiencies that result in the denial in a notification to the applicant. *The reviewing authority may identify other apparent deficiencies in additional information submitted after the initial application.*

(d) (i) If the reviewing authority *or independent reviewer* denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority *or independent reviewer* shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application.

(ii) If the reviewing authority *or independent reviewer* denies an application and the applicant resubmits a corrected application after 30 days after the date of the denial letter, the reviewing authority *or independent reviewer* 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~~ *local* board of health, *or independent reviewer*.

(iii) If the review of the resubmitted application is conducted by a local department, ~~or~~ *local* board of health, *or independent reviewer* and the reviewing authority *or independent reviewer* 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 *or independent reviewer* completes its review under subsection (3)(d)(i) or (3)(d)(ii).

(4) Except as provided in subsections (6) and (7), if the reviewing authority *or independent reviewer* needs an extension of a deadline in this section to complete its review or if an applicant requests an extension of a deadline, then the reviewing authority *or independent reviewer* 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 *or independent reviewer* may extend a deadline in this section until the items required in 76-4-115(2) are submitted. The reviewing authority *or independent reviewer* shall notify the applicant of the extension before the end of the review deadline. The reviewing authority *or independent reviewer* 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.

(8) An application is considered an overdue application if the department has not provided a response or met the statutory timelines provided in this section.

(9) If a municipal system has been delegated review authority under 75-6-112, the department is not required to review water or sewer facilities that have already been approved by the municipality."

Section 6. Section 76-4-115, MCA, is amended to read:

"**76-4-115. Contents of application -- supplemental information.** (1) The application submitted under 76-4-114 must include preliminary plans and specifications for the proposed development, information required under rules adopted pursuant to this chapter, and any additional information the applicant feels necessary.

(2) In addition to the information required for the submission of the application under subsection (1), before the reviewing authority *or independent reviewer* makes a final decision on the application, the applicant shall provide:

(a) a copy of the certification from the local health department required by 76-4-104(6)(k);

(b) if required under Title 76, chapter 3, an approval from the local governing body under Title 76, chapter 3; and

(c) any public comments or summaries of public comments collected as provided in 76-3-604(7)."

Section 7. Section 76-4-116, MCA, is amended to read:

"**76-4-116. Annual ~~report~~ *and quarterly reports.*** *(1)* The department shall report annually to the environmental quality council in accordance with 5-11-210 summarizing the review procedures adopted under Title 76, chapter 4, and ~~recommending~~ *recommendations as to* whether statutory changes should be made to the process.

(2) The department shall report quarterly to the environmental quality council in accordance with 5-11-210 the number and percentage of overdue files as provided in 76-4-114(8).

(3) (a) Before July 1, 2028, the department shall provide a comprehensive review of subdivision review procedures, including an analysis of the role of independent reviewers, delays in permit issuance, and permit outcomes. The department shall consider and collect input from stakeholders in preparing the comprehensive review.

(b) The department shall report to the environmental quality council the information provided in the comprehensive review required in subsection (3)(a). The environmental quality council may provide recommendations to the department."

Section 8. Section 76-4-127, MCA, is amended to read:

"**76-4-127. Notice of certification that adequate storm water drainage ~~and or~~ *and* adequate municipal facilities will be provided.** (1) To qualify for the exemption from review set out in 76-4-125(1)(d), the certifying authority shall send notice of certification to the reviewing authority that ~~adequate storm water drainage and adequate municipal~~ *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, 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,~~ *and floor plan, including the layout of each unit proposed to be recorded* under Title 70, chapter 23, part 3;

(c) the number of parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of *the* ~~the~~ sewage disposal *and* ~~and~~ water supply systems or extensions will be financed;

(f) the relative location of the subdivision to the ~~city or the county water and/or sewer district~~ *city or the county water and/or sewer district boundaries of the certifying authority*;

(g) certification that *adequate municipal or county water and/or sewer district* ~~adequate municipal or county water and/or sewer district~~ facilities *for the supply of water and disposal of sewage and solid waste* ~~for the supply of water and disposal of sewage and solid waste~~ will be provided:. Facilities for subdivisions subject to 76-3-507 must be provided within the time that section provides.

(h) if water supply, sewage disposal, ~~or~~ solid waste*, or storm water drainage* facilities are not municipally owned, certification from the facility owners that adequate facilities will be available~~; and~~*; and*

~~(i) certification that the certifying authority has or will review and approve plans to ensure adequate storm water drainage~~

(i) certification that the certifying authority has or will review and approve plans to ensure adequate storm water drainage.

(3) A municipality may be authorized to act as a reviewing authority under this section and may self-approve the municipality's own exemption."

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. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 11. Applicability. [This act] applies to applications received on or after January 1, 2024.

Approved May 18, 2023

CHAPTER NO. 612

[HB 365]

AN ACT PROVIDING FOR A PROVISIONAL, RESTRICTED, OR PROBATIONARY LICENSE FOR A PERSON WHOSE DRIVER'S LICENSE IS SUSPENDED; AND AMENDING SECTION 61-5-208, MCA.

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

Section 1. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-1002, the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-1002 within the time period specified in 61-8-1002, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-1010. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under 61-8-1002, the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-1002 within the time period specified in 61-8-1002, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-1010. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under 61-8-1002, the license suspension remains in effect until treatment is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-1002 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-1008, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

(6) (a) A person whose driver's license is suspended may be issued a provisional, restricted, or probationary license if the person completes a court-ordered driver rehabilitation or a court-ordered improvement program.

(b) This subsection (6) does not apply to a person whose commercial driver's license is suspended under Title 61, chapter 8, part 8.

Approved May 18, 2023

CHAPTER NO. 613

[HB 366]

AN ACT INCREASING THE PENALTIES FOR ILLEGALLY PASSING A STOPPED SCHOOL BUS; PROVIDING INCREASING PENALTIES FOR FIRST, SECOND, AND THIRD AND SUBSEQUENT OFFENSES; AND AMENDING SECTION 61-8-351, MCA.

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

Section 1. Section 61-8-351, MCA, is amended to read:

"**61-8-351. Meeting or passing school bus -- vehicle operator liability for violation -- penalty.** (1) (a) When a school bus that has stopped on the roadway or street to receive or discharge school children has actuated flashing red lights as specified in 61-9-402, a driver of a motor vehicle that is approaching the school bus from either direction:

(i) shall stop the motor vehicle not less than approximately 30 feet from the school bus; and

(ii) may not proceed past the school bus until the school bus ceases operation of its flashing red lights.

(b) A driver of a motor vehicle may not overtake a stopped school bus on the right side of the school bus.

(2) When a school bus that is preparing to stop on the highway or street to receive or discharge school children has actuated flashing amber lights as specified in 61-9-402, a driver of a motor vehicle that is approaching the school bus from either direction shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop on the actuation of flashing red lights when the school bus has stopped.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height.

(4) (a) Each bus used for the transportation of school children must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus only when the school bus is stopped on the highway or street to receive or discharge school children.

(b) A school district board of trustees may adopt a policy prohibiting the operation of amber or red lights when a school bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(c) If a school bus is stopped outside of the roadway and the school bus will receive or discharge school children in a location outside of the roadway, the school bus may not actuate the flashing red lights so long as the school children do not enter the roadway.

(5) (a) When a school bus route includes a bus stop that requires a school child to cross a roadway, the school bus must be equipped with an extended stop arm that partially obstructs the roadway. A school child may not cross a roadway to enter or exit from a school bus unless the roadway has been partially obstructed by the extended stop arm.

(b) The extended stop arm must be equipped with additional flashing red lights as specified in 61-9-402 and must be capable of extending a distance of at least 54 inches from the school bus at a height of not less than 36 inches.

(c) The board of trustees shall approve each school bus stop that requires a school child to cross a roadway.

(d) A school bus that experiences a mechanical problem or an emergency that requires the school bus to stop at a nondesignated bus stop is not subject to the requirements of this subsection (5).

(6) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

(7) The driver of a motor vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(8) (a) A person who observes a violation of this section may prepare a written, in addition to an oral, report indicating that a violation has occurred. The report may contain information concerning the violation, including:

(i) the time and approximate location at which the violation occurred;

(ii) the license plate number and color of the motor vehicle involved in the violation;

(iii) identification of the motor vehicle as a passenger car, truck, bus, motorcycle, or other type of motor vehicle; and

(iv) a description of the person operating the motor vehicle when the violation occurred.

(b) A report under subsection (8)(a) constitutes particularized suspicion under 46-5-401(1) that an operator of the vehicle committed a violation of this section.

(c) A person who observes a violation of this section may file a written or oral complaint with the county sheriff's office. At the sheriff's discretion, the report may be transferred to the highway patrol or city police department. The report must be investigated by a peace officer, and the investigating officer shall contact the reporting party within 30 days to provide an update on the status or outcome of the investigation.

(9) (a) ~~Violation of subsection (1)(a) is punishable upon conviction by a fine of not more than $500.~~ *A person who violates subsection (1)(a) is guilty of a misdemeanor and is subject to the following penalties:*

(i) for a first offense, a fine of not less than $500 or more than $1,000, a sentence of community service of not less than 50 hours or more than 100 hours, or both;

(ii) for a second offense, a fine of not less than $1,000 or more than $2,000, a sentence of community service of not less than 100 hours or more than 200 hours, or both; and

(iii) for a third or subsequent offense, a fine of not less than $3,000 or more than $5,000, a sentence of imprisonment for a term of not less than 30 days, or both.

(b) Violation of subsection (1)(b) is a misdemeanor and is punishable on conviction by a fine of not more than $1,000, by imprisonment for not more than 6 months, or both.

(c) ~~It is a violation of subsection (5) for the~~ *A* driver of a motor vehicle ~~to make~~ *who makes* contact with any portion of a ~~stopped~~ school bus *stopped pursuant to subsection (5)*, including *making contact with* an extended stop arm~~;~~ or ~~to make contact with~~ a school child within 30 feet of a school bus~~.~~ ~~A violation under this subsection (9)(c)~~ is *guilty of* a misdemeanor and is ~~punishable on conviction by a fine of not more than $500~~ *subject to the penalties allowed in subsection (9)(a)*."

Approved May 18, 2023

CHAPTER NO. 614

[HB 376]

AN ACT ESTABLISHING A HOSPITAL PATIENT BILL OF RIGHTS.

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

Section 1. Patient bill of rights. (1) The following rights may be exercised by a patient or, if the patient lacks decisionmaking capacity, is legally incompetent, or is a minor, by a patient's designated surrogate or lay proxy decisionmaker as defined in 50-5-1301:

(a) The patient has the right to be treated with dignity and respect.

(b) The patient has the right to and is encouraged to obtain from physicians and other direct caregivers relevant, current, and understandable information concerning diagnosis, treatment, and prognosis.

(c) Except in emergencies when the patient lacks decisionmaking capacity and the need for treatment is urgent, the patient is entitled to be informed of information related to the specific procedures and treatments that are recommended or planned, the risks involved that may cause harm to the patient, the possible length of recuperation, and the medically reasonable alternatives and their accompanying risks and benefits.

(d) The patient has the right to know the identity of physicians, nurses, and others involved in the patient's care, as well as whether those involved are students, residents, or other trainees

(e) The patient has the right to know the immediate and long-term financial implications of treatment choices, to the extent the costs are known.

(f) (i) The patient has the right to make decisions about the plan of care prior to and during the course of treatment, to refuse a recommended treatment or plan of care, and to be informed of the medical consequences of the decision.

(ii) When the patient refuses a recommended treatment or plan of care, the patient is entitled to other appropriate care and services that the hospital provides or to transfer to another hospital or discharge to home with impunity and without penalty or threat.

(iii) A hospital shall notify patients of any policy that might affect patient choices within the facility.

(g) (i) The patient has the right to have an advance directive, including but not limited to a living will, health care proxy, or health care power of attorney, concerning treatment or designating a surrogate decisionmaker with the expectation that the hospital will honor the intent of the directive. A hospital shall advise a patient of the patient's rights under state law and hospital policy to make informed medical choices, ask if the patient has an advance directive or surrogate decisionmaker, and include that information in the patient's record.

(ii) The patient has the right to timely information about hospital policy that may limit the hospital's ability to implement fully a legally valid advance directive or surrogate decisionmaker.

(h) The patient has the right to have an advocate or support person of the patient's choosing present in clinically appropriate settings.

(i) The patient has the right to visitation privileges that are no more restrictive for nonfamily members than they are for immediate family members and, in an end-of-life situation, has the right to visitation regardless of the patient's diagnosis. If the diagnosis or condition of a person at the end of life requires specific protocols, the hospital shall make accommodations to facilitate visitation in accordance with the protocols and may not eliminate the opportunity for visitation unless allowing visitation would violate federal requirements and result in loss of payment.

(j) The patient has the right to every consideration of privacy.

(k) The patient has the right to review records pertaining to the patient's medical care and to have the information explained or interpreted as necessary.

(l) (i) The patient has the right to expect that, within its capacity and policies, a hospital will make reasonable response to the patient's request for appropriate and medically indicated care and services. The hospital shall provide evaluation, service, or referral as indicated by the urgency of the case.

(ii) When medically appropriate and legally permissible or on request of the patient, the patient may be transferred to another facility that has accepted the patient for transfer. The patient must have the benefit of complete information and explanation concerning the need for, risks and benefits of, and alternatives to the transfer.

(m) The patient has the right to be informed of the existence of business relationships among the hospital, educational institutions, other health care providers, or payers that may influence the patient's care and treatment.

(n) The patient has the right to consent or decline to participate in proposed research studies or human experimentation affecting care and treatment or requiring direct patient involvement and to have the studies fully explained prior to consent. A patient who declines to participate in research or experimentation is entitled to the most effective care that the hospital can otherwise provide.

(o) The patient has the right to expect continuity of care and care coordination between the patient's regular care provider and hospital care and to be informed by physicians and other caregivers of available and realistic patient care options when hospital care is no longer appropriate.

(p) The patient has the right to be informed of available resources for resolving disputes, grievances, and conflicts, including but not limited to ethics committees, patient representatives, and other available avenues.

(2) Health care facilities shall provide annual training to staff on the patient rights provided under this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 5, part 1, and the provisions of Title 50, chapter 5, part 1, apply to [section 1].

Approved May 18, 2023

CHAPTER NO. 615

[HB 385]

AN ACT REVISING DISCOVERY PROCEDURES IN CHILD ABUSE AND NEGLECT PROCEEDINGS; REQUIRING THE DEPARTMENT OF PUBLIC

HEALTH AND HUMAN SERVICES TO DISCLOSE INFORMATION ON REQUEST TO PARENTS WHO ARE PARTIES TO THE PROCEEDING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Discovery procedure. (1) On request of a parent who is a party to the proceeding, the department shall make available for examination and reproduction the following material and information within the department's possession or control:

(a) the names, addresses, and statements of all persons who the department may call to provide testimony;

(b) all written or oral statements, reports, case notes, correspondence, evaluations, interviews, and documentation produced by the department or in the department's possession that addresses the parent or child;

(c) all written reports or statements of experts who have personally examined the child or any evidence, together with the results of any physical or psychological examinations;

(d) all papers, documents, photographs, videotapes, or tangible objects that the department may use at trial or that were obtained from or purportedly belong to the parent; and

(e) all material or information that tends to support, mitigate, or negate the department's case concerning the custody of and parental rights to the child.

(2) The department may impose reasonable conditions, including an appropriate stipulation concerning the chain of custody, to protect physical evidence produced under subsection (1)(d).

(3) The department's obligation of disclosure extends to material and information in the possession or control of members of the department's staff and of any other persons who have participated in the investigation or evaluation of the case.

(4) On motion showing that the parent has requested discovery relevant to the preparation of the case for additional material or information not otherwise provided for and that the parent is unable to obtain the substantial equivalent by other means, the court shall order the department or any person to make it available to the parent. The court may, on the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(5) If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of this section or any order issued pursuant to this section, the court may order any remedy that it finds just under the circumstances, including but not limited to:

(a) ordering disclosure of the information not previously disclosed;

(b) granting a continuance;

(c) holding a witness, party, or counsel in contempt for an intentional violation; or

(d) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed.

(6) The identity of any person who reported or provided information on an alleged child abuse or neglect incident is protected from disclosure as provided under 41-3-205.

(7) Any materials furnished to an attorney under this section may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case.

(8) If at any time after a disclosure has been made the department discovers additional material or information that would be subject to disclosure had it been known at the time of disclosure, the department shall promptly notify the parent of the existence of the additional material or information and make an appropriate disclosure.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 1].

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

Section 4. Applicability. [This act] applies to proceedings pending on [the effective date of this act] and proceedings filed on or after [the effective date of this act].

Approved May 18, 2023

CHAPTER NO. 616

[HB 393]

AN ACT GENERALLY REVISING LAWS RELATED TO ESTABLISHING THE STUDENTS WITH SPECIAL NEEDS EQUAL OPPORTUNITY ACT AND THE MONTANA SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS ACCOUNT PROGRAM; ESTABLISHING REQUIREMENTS FOR ELIGIBILITY AND ALLOWABLE EXPENSES; PROVIDING RESPONSIBILITIES FOR PARENTS, SCHOOL DISTRICTS, AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION; CLARIFYING THE AUTONOMY OF PARTICIPATING PRIVATE SCHOOLS; PROVIDING FOR FUNDING OF SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS ACCOUNTS; ESTABLISHING THE SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS TRUST; PROVIDING AN APPROPRIATION AND A STATUTORY APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 10] may be cited as the "Students with Special Needs Equal Opportunity Act".

Section 2. Montana special needs equal opportunity education savings account program -- findings and purposes. (1) There is a Montana special needs equal opportunity education savings account program provided by the legislature as a desirable educational program pursuant to Article X, section 1(3), of the Montana constitution, which gives authority to the legislature to provide for educational programs and institutions in addition to a basic system of public schools that will fulfill the goal of the people to have an overall system of education that offers equal opportunity for all to reach their full educational potential.

(2) The legislature finds that expanding special needs educational opportunities within the state is a valid public purpose to ensure equal educational opportunity for all children with special needs.

(3) The purposes of [sections 1 through 10] pursuant to Article X, section 1(1), of the Montana constitution are to ensure that Montana children have access to educational opportunities that will develop each child's full educational potential.

Section 3. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Eligible postsecondary institution" means an accredited postsecondary institution located in Montana.

(2) "ESA student amount" means the sum of:

(a) the data-for-achievement payment rate under 20-9-306;

(b) the Indian education for all payment rate under 20-9-306;

(c) the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321; and

(d) the applicable per-ANB maximum rate established in 20-9-306 for the student multiplied by the ratio of adopted general fund budget to maximum general fund budget in the prior year, rounded to the nearest one hundredth and not to exceed 1.00, in the district in which the student is included for ANB purposes under the program.

(3) "Montana special needs equal opportunity education savings account" or "account" means an account within the trust established in [section 10] in which a payment under [section 9] is deposited on behalf of a qualified student for the purpose of reimbursement for the purchase of allowable educational resources pursuant to [section 4] for qualified students.

(4) "Parent" means a biological parent, adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of a qualified student, and whose parental rights have not been terminated.

(5) "Program" means the Montana special needs equal opportunity education savings account program established in [section 2].

(6) "Qualified school" means a nonpublic school serving any combination of grades kindergarten through 12 that:

(a) is in compliance with applicable local health and safety regulations;

(b) holds a valid occupancy permit, if required by the municipality;

(c) does not discriminate on the basis of race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds, pursuant to 49-2-307;

(d) requires that any employee who may have unsupervised access to children be subject to a criminal history background check prior to employment pursuant to and in support of 42 U.S.C. 5119(a) and (c); and

(e) meets the requirements for Montana nonpublic schools under 20-5-109.

(7) "Qualified student" means a resident of the state who:

(a) in the current school year:

(i) is identified as a "child with a disability" under the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(ii) is between the ages of 5 and 19 on September 10;

(b) is not currently enrolled in a school operating for the purpose of providing educational services to youth in department of corrections commitment programs or in the Montana school for the deaf and blind; and

(c) (i) was counted during the previous school year for purposes of school district ANB funding;

(ii) was enrolled during the previous school year in a program listed in subsection (7)(b);

(iii) did not reside in the state in the previous school year; or

(iv) is eligible to enter a kindergarten program pursuant to 20-7-117.

(8) "Resident school district" means the school district in which a student resides.

Section 4. Use of Montana special needs equal opportunity education savings account -- allowable educational resources. (1) The superintendent of public instruction shall allow money deposited in the

Montana special needs equal opportunity education savings account to be used to reimburse parents for the purchase of the following educational resources only for the benefit of the individual for whom the account was created:

(a) qualified school tuition, fees, textbooks, software, or other instructional materials or services;

(b) an educational program or course using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs;

(c) curriculum, including supplemental materials necessary for the curriculum;

(d) tutoring;

(e) educational therapies or services, including but not limited to occupational, behavioral, physical, speech-language, and audiology therapies from licensed or certified practitioners or providers, including licensed or certified paraprofessionals or educational aides;

(f) state or nationally recognized assessment tests, advanced placement exams, entrance examinations at an eligible postsecondary institution, or other assessment instruments;

(g) services provided by a public school in the state, including individual classes and extracurricular activities;

(h) eligible postsecondary institution tuition, books, online courses, or other fees;

(i) no more than $50 annually in consumable education supplies, such as paper, pens, and markers;

(j) transportation required for another allowable educational service;

(k) fees paid to a cooperative educational program; and

(l) any other educational expense approved by the superintendent of public instruction.

(2) Account funds may not be refunded, rebated, or shared with a parent or participating student in any manner.

(3) A parent may pay for educational services or costs not covered by account funds.

(4) Nothing in [sections 1 through 10] may be construed to require that a qualified student must be enrolled, full-time or part-time, in either a private school or nonpublic online school.

Section 5. Parent responsibilities. (1) In order for a qualified student to participate in the Montana special needs equal opportunity education savings account program during the time periods designated by the superintendent of public instruction pursuant to [section 6], the superintendent of public instruction shall require parents of qualified students who wish to participate in the program to notify the superintendent of public instruction and sign a contract with the superintendent of public instruction to do the following:

(a) utilize account funds to procure allowable educational resources under [section 4] to develop the qualified student's full educational potential;

(b) release the resident school district from all obligations to educate the qualified student, including any requirements that the district provide a free and appropriate education to the qualified student or develop an individualized education program for the qualified student;

(c) submit to the superintendent of public instruction copies of receipts for allowable educational resources for reimbursement;

(d) if the qualified student is re-enrolled in a public school, immediately notify the superintendent of public instruction; and

(e) if the qualified student enrolls at a qualified school, ensure that the qualified student:

(i) remains in attendance unless excused by the qualified school for illness or other good cause; and

(ii) complies with the qualified school's published policies.

(2) If a qualified student re-enrolls full-time in a public school district, the superintendent of public instruction shall terminate payments for the student to the Montana special needs equal opportunity education savings account.

Section 6. Responsibilities of superintendent of public instruction -- rulemaking. (1) The superintendent of public instruction shall make information about the program accessible through printed informational materials and the office of public instruction website to parents, students, and school districts.

(2) The superintendent of public instruction shall ensure that parents of qualified students receive notice that participation in the program is a parental placement under the Individuals With Disabilities Education Act, 20 U.S.C. 1412, along with an explanation of the rights that parentally placed students possess under the Individuals With Disabilities Education Act and any applicable state laws and regulations.

(3) The superintendent of public instruction may remove a qualified student from eligibility for an account if the parent fails to comply with the terms of the contract signed pursuant to [section 5], knowingly misuses account funds, or knowingly fails to comply with the terms of the contract with intent to defraud. If a qualified student is removed from eligibility, the superintendent of public instruction shall suspend the qualified student from the program and shall notify the parent in writing that the qualified student has been suspended and that no further reimbursements from the account will be allowed. The notification must specify the reason for the suspension and state that the parent has 10 business days to respond and take corrective action. If the parent refuses or fails within the 10-day period to contact the superintendent of public instruction or provide information or make a report that is required for reinstatement, the superintendent of public instruction may remove the qualified student from the program pursuant to this subsection. A parent may appeal the superintendent of public instruction's decision pursuant to Title 2, chapter 4, part 6.

(4) The superintendent of public instruction may refer cases of substantial misuse of account funds to the attorney general for investigation if the superintendent of public instruction obtains evidence of fraudulent use of an account.

(5) The superintendent of public instruction shall establish rules necessary for administering the program that are limited to the following:

(a) establishment of no fewer than two time periods each year during which a student's parent may notify the superintendent of public instruction of the parent's desire for the student to participate in the program. Each time period must be at least 1 month long. One period must be between September 1 and January 1, and the other time period must be between March 1 and June 1, based on the superintendent of public instruction's determination of school district and parent needs.

(b) verification of student eligibility pursuant to [section 3];

(c) creation of a parent contract pursuant to [section 5];

(d) notification of the resident school district of the student's participation in the program;

(e) calculation of the amount of the ESA student amount;

(f) accounting guidance related to the money remitted by school districts under [section 9(2)];

(g) establishment of participation agreements to create a trust interest in the special needs equal opportunity education savings trust established in [section 10] and provision for participation in the program; and

(h) procedures for reimbursement for the purchase of allowable educational resources from a student's account.

Section 7. Responsibilities of public school districts -- student records. A public school or school district that previously enrolled a qualified student participating in the Montana special needs equal opportunity education savings account program shall provide a qualified school that has enrolled a participating student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

Section 8. Qualified schools -- regulations. (1) The superintendent of public instruction shall require qualified schools who enroll students who are participating in the Montana special needs equal opportunity education savings account program to submit quarterly reports of services provided to qualified students as required under the program.

(2) A qualified school is not an agent of the state or federal government.

(3) The superintendent of public instruction or any other state agency may not regulate the educational program of a qualified school that enrolls a qualified student, except as provided under 20-5-109.

(4) The creation of the Montana special needs equal opportunity education savings account program does not expand the regulatory authority of the state, its officers, or a school district to impose additional regulation on providers of educational services under the program beyond that reasonably necessary to enforce the requirements of the Montana special needs equal opportunity education savings account program.

Section 9. Montana special needs equal opportunity education savings account -- funding and administration. (1) Following receipt of a signed contract pursuant to [section 5], the superintendent of public instruction shall notify the resident school district of the qualifying student's participation in the program and the amount calculated by dividing the student's ESA student amount by 10.

(2) Beginning with the next distribution of BASE aid payments pursuant to 20-9-344 for the months of August through May, the resident school district shall remit to the office of public instruction the amount calculated in subsection (1) for each participating student by no later than the 10th of the month following the BASE aid distribution.

(3) The money remitted under subsection (2):

(a) must be from the district's general fund;

(b) may not include revenue from the guarantee account described in 20-9-622; and

(c) must be accounted for under rules adopted by the superintendent of public instruction.

(4) The superintendent of public instruction shall account for the money remitted under subsection (2) as follows:

(a) 95% of the money must be deposited in accounts within the special needs equal opportunity education savings trust established in [section 10] to be used only for reimbursing parents for the purchase of allowable educational resources pursuant to [section 4]; and

(b) 5% of the money must be deposited in the office of public instruction special needs equal opportunity ESA administration account established in subsection (7).

(5) The office of public instruction shall ensure that the participating student is included in the resident school district's ANB calculation pursuant to 20-9-311 in any year that the student remains otherwise eligible for inclusion and participates in the program. No other school district may count the student for ANB purposes. The participating student is not considered to be enrolled in the resident school district.

(6) The office of public instruction shall administer the individual student accounts pursuant to subsection (4)(a) so that:

(a) reimbursements are made promptly to parents for the purchase of allowable educational resources for a participating student pursuant to [section 4]; and

(b) on a student's 24th birthday, the student's account is closed and any remaining funds in the student's account are returned to the guarantee account described in 20-9-622.

(7) (a) There is an office of public instruction special needs equal opportunity ESA administration account within the state special revenue fund created in 17-2-102 consisting of 5% of the money remitted to the office of public instruction pursuant to subsection (2).

(b) Funds in the office of public instruction special needs equal opportunity ESA administration account are statutorily appropriated, as provided in 17-7-502, to the office of public instruction and must be used for the costs of administering the program.

Section 10. Special needs equal opportunity education savings trust. There is a special needs equal opportunity education savings trust that is an instrumentality of the state and that is created for a public purpose. The trust consists of participating trusts with each participating trust corresponding to an account. The assets of one participating trust may not be commingled with the assets of any other participating trust. The assets and earnings of any participating trust may not be used to satisfy the obligations of any other participating trust. Each participating trust account represents a trust interest in the trust and includes interest and investment income earned by the trust account.

Section 11. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; *[section 9];* 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116;

22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch, 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

Section 12. Appropriation. The following money is appropriated from the state general fund to the office of public instruction:

(1) for fiscal year 2024, $75,000 for the purpose of Montana special needs equal opportunity education savings account program administrative costs; and

(2) for fiscal year 2025, $30,000 for the purpose of Montana special needs equal opportunity education savings account program administrative costs.

Section 13. Transition. The legislature intends that this program be operational for the school year beginning July 1, 2024, and that the office of public instruction develop all necessary components of the program during the school year beginning July 1, 2023, to meet that intention.

Section 14. Codification instruction. [Sections 1 through 10] 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 10].

Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. Effective date. [This act] is effective July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 617

[HB 396]

AN ACT REVISING LAWS RELATED TO THE ADMITTANCE OF CHILDREN TO PUBLIC SCHOOLS; REQUIRING TRUSTEES TO ADMIT RESIDENT SCHOOL-AGED CHILDREN ON A PART-TIME BASIS AT THE PARENT'S REQUEST; AMENDING SECTIONS 20-5-101 AND 20-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 20-5-101, 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) 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 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) The trustees shall assign and admit a child whose parent or guardian is being relocated to Montana under military orders to a school in the district and allow the child to preliminarily enroll in classes and apply for programs offered by the district prior to arrival and establishing residency.

(6) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title.

(7) 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.

(8) The trustees shall assign and admit a child who is enrolled in a nonpublic or home school and who meets the requirements of subsection (1) as a part-time enrollee at the request of the child's parent or guardian.

(9) For the purposes of this part, "part-time enrollee" means a qualifying pupil who is enrolled and admitted at one of the fractional levels that qualify for part-time ANB pursuant to 20-9-311(4)(a) or (4)(d)."

Section 2. Section 20-5-102, MCA, is amended to read:

"**20-5-102. Compulsory enrollment and excuses.** (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday; or

(b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when the parent, guardian, or person establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;

(d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (2)(e), a home school is the instruction by a parent of the parent's child, stepchild, or ward in the parent's residence and a nonpublic school includes a parochial, church, religious, or private school. *A child enrolled in a nonpublic or home school may enroll on a part-time basis in a public school.*"

Section 3. Effective date. [This act] is effective July 1, 2023.

Section 4. Applicability. [This act] applies to school years beginning on or after July 1, 2023.

Approved May 18, 2023

CHAPTER NO. 618

[HB 6]

AN ACT IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING PROJECT GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE NATURAL RESOURCES PROJECTS STATE SPECIAL REVENUE ACCOUNT; APPROPRIATING MONEY FOR A

CONTINGENT LOAN FOR MILK RIVER REPAIR PROJECTS; PROVIDING FOR COORDINATION OF FUNDING; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriations for renewable resource grants. (1) For the biennium beginning July 1, 2023, there is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to:

(a) $300,000 for emergency projects grants to be awarded by the department over the biennium;

(b) $3,500,000 for planning grants to be awarded by the department over the biennium;

(c) $500,000 for irrigation development grants to be awarded by the department over the biennium;

(d) $500,000 for watershed grants to be awarded by the department over the biennium;

(e) $100,000 for private grants to be awarded by the department over the biennium; and

(f) $2,500,000 for nonpoint source pollution reduction grants to be awarded by the department over the biennium.

(2) The amount of $6,350,000 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 for the biennium beginning July 1, 2023. The funds referred to in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts listed in subsection (4), subject to the conditions set forth in [sections 2 and 6] and the contingencies described in the renewable resource grant and loan program January 2023 report to the 68th legislature titled: "Governor's Executive Budget Fiscal Years 2023-2025 Volume 6".

(3) Funds must be awarded up to the amounts approved in subsection (4) in the following listed order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. If at any time a grant sponsor determines that a project will not begin before June 30, 2025, the sponsor shall notify the department of natural resources and conservation. After all eligible projects are funded, remaining funds may be used for any renewable resource project authorized under this section.

(4) The following are the prioritized infrastructure grant projects:

RENEWABLE RESOURCE INFRASTRUCTURE GRANT PROJECTS

Applicant/Project	Amount
Cooke City	
Cooke City Wastewater Treatment and Collection System	$125,000
West Yellowstone, Town of	
West Yellowstone Wastewater Treatment Plant Project	$125,000
Red Lodge, City of	
Red Lodge Wastewater System Improvements	$125,000
Superior, Town of	
Superior Wastewater System Improvements Project	$125,000
Choteau, City of	
Choteau Water System Improvements	$125,000
Cascade, Town of	
Cascade Wastewater System Improvements	$125,000
Sand Coulee, Town of	

Sand Coulee Wastewater Improvements	$125,000
Kalispell, City of	
Kalispell Morning Star Court Water and Wastewater Improvement Project	$125,000
Saco, Town of	
Saco Wastewater System Improvements	$125,000
Drummond, Town of	
Drummond Wastewater Treatment Facility Upgrade	$125,000
Craig County WSD	
Craig Wastewater System Improvements	$125,000
Gallatin Canyon County Water Sewer District	
Gallatin Canyon County Water Sewer District Gallatin Canyon Sewer Project Phase 1.2	$125,000
Thompson Falls, City of	
Thompson Falls Water System Improvements Project	$125,000
Corvallis County Sewer District	
Corvallis Wastewater Collection System Improvements	$125,000
Helena, City of	
Helena Red Mountain Flume Repairs Project #22-05	$125,000
Havre, City of	
Havre Water System Improvements Project	$125,000
Bigfork County Water and Sewer District	
Bigfork County Water and Sewer District West Trunk Sewer Replacement and Collection Basin Rehabilitation Project	$125,000
Belt, Town of	
Belt Water System Improvements	$125,000
Lincoln County	
Lincoln County Libby Creek Community Water and Wastewater Improvements	$125,000
Richey, Town of	
Richey Water Main Replacement Phase 2	$125,000
Geraldine, Town of	
Geraldine Water System Improvements	$125,000
Victor Water and Sewer District	
Victor Wastewater Collection and Treatment Improvements Project	$125,000
Forsyth, City of	
Forsyth Water System Improvements	$125,000
Townsend, Town of	
Townsend Water System Improvements Project	$125,000
Martinsdale Water and Sewer District	
Martinsdale Water and Sewer District Water System Improvements	$125,000
Twin Bridges, Town of	
Twin Bridges Water System Improvements	$125,000
Dodson, Town of	
Dodson Water System Improvements	$125,000
Sunburst, Town of	
Sunburst Wastewater Distribution and Treatment Project	$125,000
Philipsburg, Town of	
Water Main Replacement Alley between Broadway and Stockton (Duffy-Sansome)	$125,000
Missoula, City of	
Missoula Comprehensive Stormwater Plan	$125,000

Denton, Town of	
Denton Wastewater System Upgrades Phase 1	$125,000
Dutton, Town of	
Dutton Water System Improvements	$125,000
Circle, Town of	
Circle Waterline Replacement Project Phase 4	$125,000
Clancy Water and Sewer District	
Clancy Water and Sewer District Water System Improvements	$125,000
Basin County Water and/or Sewer District	
Basin Water System Improvements Project	$125,000
Wolf Point, City of	
Wolf Point Wastewater Project Phase 1	$125,000
Hideaway Community County Water & Sewer District	
Hideaway Court Community Sewer Project (HCCWSD)	$125,000
Chester, Town of	
Chester Wastewater Improvements Project	$125,000
Troy, City of	
Troy Water System Improvements Project	$125,000
Lockwood Water and Sewer District	
Lockwood Water and Sewer District Mid Zone Reservoir	$125,000
Hot Springs, Town of	
Hot Springs Sewer Lagoon Rehabilitation Project	$125,000
Hingham, Town of	
Hingham Wastewater System Improvements Project	$125,000
Chester, Town of	
Chester Water System Improvements Project $	125,000
Shelby, City of	
Shelby Wastewater Improvements Project	$125,000
Conrad, City of	
Conrad Storm Water Project	$125,000
Absarokee Water and Sewer District	
Absarokee Water and Sewer District Water System Improvements	$125,000
North Cut Bank Glacier County Water and Sewer District	
North Cut Bank Glacier County Wastewater Lift Station Improvements	$125,000
Yellowstone Boys and Girls Ranch County Water and Sewer District	
Yellowstone Boys and Girls Ranch County WSD Wastewater System Improvements	$125,000
Judith Gap, Town of	
Judith Gap Wastewater Water Line and Meter Upgrade Project	$125,000
Boulder, City of	
Boulder Drinking Water System Improvements	$125,000
Anaconda - Deer Lodge County	
Water Sewer Planning Project	$100,000

(5) The amount of $2,560,000 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 for the biennium beginning July 1, 2023. The funds referred to in this subsection must be awarded by the department to the named entities for the described purposes and in the grant amounts listed in subsection (7), subject to the conditions set forth in [sections 2 and 6] and the contingencies described in the renewable resource grant and loan program January 2023 report to the 68th legislature titled: "Governor's Executive Budget Fiscal Years 2023-2025 Volume 6".

(6) Funds must be awarded up to the amounts approved in subsection (7) in the following listed order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. If at any time a grant sponsor determines that a project will not begin before June 30, 2025, the sponsor shall notify the department of natural resources and conservation. After all eligible projects are funded, remaining funds may be used for any renewable resource project authorized under this section.

(7) The following are the prioritized irrigation grant projects:

RENEWABLE RESOURCE IRRIGATION GRANT PROJECTS

Applicant/Project	Amount
Greenfields Irrigation District	
Greenfields Irrigation District Pishkun Inlet Hydroelectric Project	$125,000
Lower Yellowstone Irrigation District #1	
Lower Yellowstone Irrigation District #1 Thomas Point Pumping Plant Rehabilitation	$125,000
Lower Yellowstone Irrigation Project	
Lower Yellowstone Irrigation Project Critical Structures Rehabilitation Project	$125,000
Helena Valley Irrigation District	
Helena Valley Irrigation District Regulating Reservoir Preservation & Bypass Project	$125,000
Buffalo Rapids Irrigation Project 2	
Shirley Main Canal Rehabilitation Phase 2	$125,000
Pondera County Conservation District	
Pondera County Conservation District Birch Creek Diversion Automation Project	$125,000
Madison County	
Madison County Big Hole River Restoration Design and Permitting	$125,000
Ruby Valley Conservation District	
Ruby Valley CD Upper Jefferson Channel Restoration Project	$125,000
Newlan Creek Water District	
Newlan Creek Water District Newlan Creek Dam Safety Improvements	$125,000
Savage Irrigation District	
Savage Irrigation District Pump Station Rehabilitation	$125,000
Pondera County Conservation District	
Pondera County Conservation District PCCRC C-Canal Headworks Automation	$125,000
East Bench Irrigation District	
East Bench Irrigation District Carter Creek Lining & Headgate Automation	$125,000
Buffalo Rapids Irrigation Project 1	
Eiker Reach Canal Rehabilitation Project	$125,000
Hill County	
Hill County Beaver Creek Dam Tailwater Channel Restoration	$125,000
Granite Conservation District	
Granite Conservation District - Allendale Ditch Rehabilitation	$125,000
Blaine County	
Blaine County NCIA North Chinook Reservoir Dam Outlet Rehabilitation Project	$125,000
Paradise Valley Irrigation District	

Paradise Valley Irrigation District Hillside Ditch Pipeline Conversion Phase 2	$125,000
Huntley Project Irrigation District Highline Discharge Pipeline Rehabilitation	$125,000
Tin Cup Water and Sewer District Tin Cup and Mill Ditch Improvements	$125,000
Billings, City of Rim Tunnel Rehabilitation Project	$125,000
Clinton Irrigation District Schoolhouse Lateral Pipeline Conversion	$60,000

Section 2. Coordination of fund sources for grants to political subdivisions and local governments. A project sponsor listed under [section 1(4) or section 1(7)] may not receive funds from both the reclamation and development grants program and the renewable resource grant and loan program for the same project during the same biennium.

Section 3. Milk River repair and maintenance fund. (1) There is an account in the state special revenue fund established in 17-2-102 to be known as the Milk River repair and maintenance fund.

(2) Interest earned must be retained by the fund.

(3) Eligible uses include long-term operations and maintenance of the Milk River project, and the authorization of loans specified in [section 4].

Section 4. Authorization. (1) The amount transferred in [section 10] shall be held in escrow for loans to the Milk River project.

(2) The interest rate for the loan made to the Milk River project from proceeds from subsection (1) must be negotiated with department of natural resources and conservation at a rate and term consistent with loan financing available from other federal and private sources.

(3) Loan repayment may be interest only.

(4) The interest repaid must be placed in the state special revenue account established in [section 3] for use by the Milk River project for long-term operation and maintenance of the Milk River project.

Section 5. Loan contingency. (1) The approval of the loan in [section 4] is contingent on the following:

(a) the receipt of federal cost share that addresses the financial capability of the Milk River project contracting entities as cited in the Milk River project ability-to-pay study by the U.S. department of the interior, bureau of reclamation, dated September 2022, or the budget director adopting a repair plan from the Milk River joint board of control. The department of natural resources and conservation shall develop the required contents of the repair plan. The Milk River joint board of control shall submit its repair plan to the department of natural resources and conservation. If the budget director does not adopt the repair plan, the Milk River joint board of control may resubmit a revised repair plan to the department.

(b) the Milk River joint board of control demonstrating to the satisfaction of the department of natural resources and conservation its technical, managerial, and financial capacity, through water user fees or other available sources of funding, to pay the annual costs of the loan repayment over the term of the loan.

Section 6. Condition of grants. Disbursement of funds under [section 1] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work, schedule, and budget for the project must be approved by the department of natural resources and conservation. Any changes in scope of work or budget after legislative approval may not change project goals and objectives. Changes in activities that would reduce the public or natural resource benefits as presented in department of natural resources

and conservation reports and applicant testimony to the 68th legislature may result in a proportional reduction in the grant amount.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the program report to the legislature for the biennium ending June 30, 2025, or, in the case of planning grants issued under [section 1(1)(b)], completion of conditions specified at the time of written notification of approved grant authority.

(3) The project sponsor must have a fully executed grant agreement with the department.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal as presented to the legislature.

Section 7. Appropriation established. There is appropriated to any entity of state government that receives a grant under [section 1] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to entities from prior bienniums are reauthorized for completion of contract work.

Section 8. Approval of grants -- completion of biennial appropriation. The legislature, pursuant to 85-1-605, approves the renewable resource programs grants listed in [section 1]. The authorization of these grants constitutes a biennial appropriation from the natural resources projects state special revenue account established in 15-38-302.

Section 9. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 10. Transfer of funds. By July 1, 2023, the state treasurer shall transfer $26 million from the general fund to the natural resources projects state special revenue account established in 15-38-302.

Section 11. Appropriation -- contingency. Contingent on satisfaction of the conditions in [section 5], there is appropriated $26 million from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation for the biennium beginning July 1, 2023, for a loan to the Milk River joint board of control for the project stakeholder cost share for the Milk River repair projects.

Section 12. Coordination instruction. (1) If both [this act] and an act that provides additional funding for renewable resource grant and loan program grants from a source other than the natural resources projects state special revenue account established in 15-38-302 are passed and approved, the projects listed in [section 1(4) and section 1(7) of this act] that do not receive funding from the appropriations in [section 1(2) and section 1(5) of this act] may receive funding from the appropriation in the other act designated for renewable resource grant and loan program grants in the order of completion of the conditions of [section 6 of this act] and to the extent that there is appropriation authority available.

(2) Appropriations made in [section 1(1)(a) through (1)(f) may be adjusted within [section 1(1)(a) through (1)(f)] within the biennium based on demand or emergencies.

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, 2023.

Approved May 19, 2023

CHAPTER NO. 619

[HB 55]

AN ACT ESTABLISHING A TAX ON ELECTRIC VEHICLE CHARGING STATIONS; PROVIDING FOR DEPARTMENT OF LABOR AND INDUSTRY INSPECTION; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR INSTALLATION OF ELECTRIC METERS AND THE REMITTANCE OF TAXES; REDUCING ADDITIONAL ELECTRIC VEHICLE REGISTRATION FEES FOR MONTANA RESIDENTS WHEN THE TAX ON CHARGING GOES INTO EFFECT; PROVIDING THAT A CHARGING STATION OWNER SHALL PROVIDE CERTAIN INFORMATION UPON REGISTRATION WITH THE DEPARTMENT OF TRANSPORTATION; PROVIDING DEFINITIONS; AMENDING SECTION 69-8-803, 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, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Charging station" means equipment with a rated capacity greater than 25 kilowatts that is not installed at a residence or owned by an association of real property owners including a homeowners' association as defined in 70-17-901 that transfers electric current to the power system of an electric vehicle and the real property in which the equipment is affixed, and includes public charging stations and public legacy charging stations.

(2) "Charging station operator" means a person, firm, general partnership, limited partnership, limited liability partnership, corporation, limited liability company, or other lawfully recognized business entity that operates a public charging station.

(3) "Public charging station" means a charging station that is a business using a metered system to deliver electric current to an electric vehicle and charges the customer either for the electricity transferred or for the duration of time during which the transfer of electricity takes place.

(4) "Public legacy charging station" means a public charging station operating before July 1, 2023, that has never had a metering system in place capable of measuring electricity transferred from the charging station to the vehicle or is incapable of measuring the time elapsed while actively charging a vehicle and placing a fee on the charging session.

(5) "Public utility" has the meaning as defined in 69-3-101.

Section 2. Public charging station tax -- public legacy charging station tax -- reduction of additional electric vehicle registration fees. (1) Effective July 1, 2023, there is a tax of 3 cents a kilowatt hour or its equivalent in addition to the public utility's approved rate on the electric current used to charge or recharge the battery or batteries of an electric vehicle at public charging stations installed after July 1, 2023.

(2) Effective July 1, 2025, there is a tax of 3 cents a kilowatt hour or its equivalent in addition to the public utility's approved rate on the electric current used to charge or recharge the battery or batteries of an electric vehicle at public legacy charging stations.

(3) The tax authorized by this section is based on the rate of tax and electricity transferred during the charging process, and it does not include any fees or charges associated with the method of payment for the charging services.

(4) Effective July 1, 2028, the amount of any additional electric vehicle registration fee charged by the state to a resident on an electric vehicle is reduced by 30%.

Section 3. Installation of electric meters. (1) Effective July 1, 2023, all new public charging stations must have an electric meter installed or approved by the public utility exclusively dedicated to the public charging station that measures all of the electricity delivered to the public charging station. The charging station owner shall pay the cost of meter installation.

(2) Effective July 1, 2025, all public charging stations and public legacy charging stations installed prior to July 1, 2023, must have an electric meter installed or approved by the public utility exclusively dedicated to the public charging station or public legacy charging station that measures all of the electricity delivered to the public charging station or public legacy charging station. The charging station owner shall pay the cost of meter installation.

(3) Effective July 1, 2028, all public legacy charging stations must be equipped with metering devices capable of accurately measuring the amount of electricity being delivered to the motor vehicle.

(4) It is the public charging station owner's responsibility to comply with the provisions of this section and not the duty of the public utility to enforce compliance.

Section 4. Charging station rate disclosure. A charging station operator shall disclose at the charging station site the rate for electric power transferred to an electric vehicle.

Section 5. Charging station operator statements and tax payment. (1) All charging stations must be registered with the department of transportation 30 days after [the effective date of this act].

(2) When registering the charging station with the department of transportation, the charging station owner shall provide the following information:

(a) name, mailing address, telephone number, and e-mail address of the owner;

(b) street address for the physical location of the charging station;

(c) the charging station's rated capacity in terms of wattage, voltage, and amperage; and

(d) additional information as required by the department.

(3) Charging stations that begin operation after [the effective date of this act] must be registered with the department of transportation no later than 30 days after the first day of operation.

(4) (a) The public utility shall collect the tax levied in [section 2] in its monthly invoice to the public charging station owner and remit the proceeds as calculated in subsection (4)(b) to the department of transportation within 30 days following the preceding calendar quarter when the tax was collected.

(b) The public utility shall remit 2.75 cents for each kilowatt hour of electricity sold to a charging station owner to the department of transportation and is authorized to retain 0.25 cents per kilowatt hour to cover costs associated with collecting the tax.

(c) The public utility may create a new class of customers for billing at its discretion consisting solely of public charging stations.

(d) The billing rate for public charging stations must include the tax levied in [section 2] in addition to the public utility's approved rate or tariff.

(e) Taxes collected in accordance with this section are not subject to review or approval by the public service commission.

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

(6) The revenue derived from [section 2] must be deposited in the highway restricted account provided for in 15-70-126.

Section 6. Section 69-8-803, MCA, is amended to read:

"**69-8-803. Electric vehicle charging stations -- service entity requirements.** (1) A public utility ~~may~~ *shall* allow an electric vehicle charging station that meets the requirements in subsection (2) to be interconnected to its distribution system.

(2) A public utility may sell power to an entity to service electric vehicle charging stations that:

(a) procure power supplied by the public utility for the purpose of electric vehicle charging; and

(b) service electric vehicle charging stations within the public utility's service territory.

(3) Entities operating electric vehicle charging stations are not public utilities.

~~(4) Charges pertaining to fueling electric vehicles may not be based on the cost of electricity.~~"

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 15, chapter 70, and the provisions of Title 15, chapter 70, apply to [sections 1 through 5].

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

Approved May 19, 2023

CHAPTER NO. 620

[HB 87]

AN ACT GENERALLY REVISING LAWS RELATED TO LICENSING BOARDS; ESTABLISHING STANDARDS FOR APPOINTMENTS, QUALIFICATIONS, AND TERMS FOR LICENSING BOARDS; PROVIDING FOR STANDARDIZED LICENSING BOARD ORGANIZATION AND COMPENSATION; REVISING REQUIREMENTS TO REVIEW REQUESTS TO CREATE A NEW LICENSING BOARD; ALLOWING THE DEPARTMENT OF LABOR AND INDUSTRY TO CHARGE FEES; ADDING LICENSING PROGRAMS TO THE REVIEW REQUIRED FOR NEW LICENSING BOARDS; AMENDING SECTIONS 2-8-401, 2-8-402, 2-15-1730, 2-15-1731, 2-15-1732, 2-15-1733, 2-15-1734, 2-15-1735, 2-15-1736, 2-15-1737, 2-15-1738, 2-15-1739, 2-15-1740, 2-15-1741, 2-15-1742, 2-15-1743, 2-15-1744, 2-15-1747, 2-15-1748, 2-15-1749, 2-15-1750, 2-15-1751, 2-15-1753, 2-15-1756, 2-15-1757, 2-15-1758, 2-15-1761, 2-15-1763, 2-15-1764, 2-15-1765, 2-15-1771, 2-15-1773, 2-15-1781, 2-15-1782, AND 37-1-133, MCA; REPEALING SECTION 2-8-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appointment -- qualifications -- terms. (1) The governor shall appoint the members of a board designated under 2-15-1730 through 2-15-1782 in accordance with this section and with the consent of the senate.

(2) (a) The governor has the authority to remove members of the board with reasonable cause, including but not limited to documented misconduct, incompetence, or neglect of duty.

(b) A person removed from a board by the governor may request reconsideration of the removal. The request for reconsideration must be

submitted to the governor within 14 days of the removal. The governor has 14 days to rescind or reaffirm the removal from the board.

(3) Each board must be composed of professional and public members.

(4) (a) Each professional member of a board, while serving as a board member:

(i) must be a resident of this state and at least 18 years of age; and

(ii) must be currently practicing in the profession or occupation and have an active license in this state for at least 1 year and in good standing for the profession or occupation in which the member is appointed to serve.

(b) For the purposes of subsection (4)(a), "good standing" means an active license unencumbered by a final order of disciplinary action or administrative suspension.

(5) (a) Each public member of the board must be a resident of this state and at least 18 years of age.

(b) A public member may not be:

(i) the spouse, parent, or child of a current or former licensee of the board; or

(ii) a person who currently or within the 3 years prior to appointment had any material financial interest in the provision of professional services or engaged in any activity related to the practice of the profession regulated by the board on which the public member is appointed to serve, except as a consumer.

(6) Each board member shall maintain eligibility to serve on the board by avoiding or disclosing conflicts of interest or relationships that would interfere with the board mission of public protection.

(7) A board member may not have a financial interest in the provision of continuing education to any licensee if that continuing education is required by statute or rule.

(8) Each member of the board shall annually attest to having completed coursework or training of a duration and covering content provided by the department to address relevant regulatory issues, including role of the board, role of the board member, conflict of interest, competition, administrative procedures, enforcement, and immunity.

(9) Except as provided in subsection (10), board members must be appointed by the governor with the consent of the senate for a term of 4 years unless appointed to fill a vacancy that occurs prior to the expiration of a former member's full term. A member appointed to fill a vacancy under this section shall serve the remaining portion of the unexpired term. Appointments made when the legislature is not in session must be confirmed at the next regular legislative session.

(10) The terms of the board members begin on July 1 and are staggered. Subject to 2-16-213, each member shall serve until the expiration of their term unless the member cannot serve because of removal or resignation from board membership.

(11) A member may serve two consecutive full terms and may not be reappointed within 4 years of the completion of the member's second consecutive full term except in cases when no qualified applications are received for membership on the board. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

Section 2. Board organization -- meetings -- compensation -- department allocation. (1) The board shall annually elect a presiding officer and a vice presiding officer to serve in the absence of the presiding officer. The presiding officer shall preside at all meetings of the board and perform duties customarily associated with the position. The presiding officer may establish

board committees to further board business and designate board members as committee members.

(2) A presiding officer elected by the board shall serve a 1-year term commencing at the conclusion of the meeting at which the presiding officer is elected and ending on the election of their successor. A presiding officer may serve no more than four consecutive 1-year terms.

(3) The board shall meet at least annually to conduct business. A majority of the membership of the board constitutes a quorum to conduct business.

(4) Members of the board are entitled to compensation and travel expenses as provided in 37-1-133.

(5) A board designated under 2-15-1730 through 2-15-1782 is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

Section 3. Section 2-8-401, MCA, is amended to read:

"**2-8-401. Purpose.** It is the intent of the legislature to:

(1) exercise the police power of the state through the establishment of licensing boards *and licensing programs* only when regulation of a profession or occupation benefits the public health, safety, welfare, or common good of the state's residents and that benefit outweighs the potential increased cost to the public and limitation on competition;

(2) recognize those professions or occupations that require specialized skill or training; and

(3) provide the public with a means to determine whether practitioners have met competency standards and to complain if the competency is suspect."

Section 4. Section 2-8-402, MCA, is amended to read:

"**2-8-402. Intent to create new board.** (1) A bill draft request to create a *department of labor and industry* licensing board *or licensing program* must include a ~~letter of intent not exceeding 1,000 words~~ *report* that addresses ~~the criteria in subsections (2) and (3).~~*:*

~~(2) The letter of intent must contain the following descriptions:~~

(a) how licensing would protect and benefit the public*;* ~~and, in particular,~~

(b) how the unregulated practice of the profession or occupation would pose a hazard to public health, safety, or welfare ~~or the common good~~ *and whether the nature of the profession or occupation makes it difficult for the consumer to evaluate the hazard*;

~~(b)~~*(c)* the ~~extent of practitioners' autonomy, as indicated by the degree of independent judgment that a practitioner may exercise or the extent of skill or experience required in making the independent judgment~~ *proposed minimum education, experience, and examination requirements necessary to provide the service, comparative data, and analysis on the licensure of the profession or occupation in other states and whether the proposed requirements are greater, less than, or equal to a national average*;

~~(c)~~*(d)* the ~~distinguishable~~ *proposed* scope of practice;

~~(d)~~*(e)* ~~the overlap or shared~~ *a description of any overlapping scopes of* ~~practices~~ *practice* with ~~an existing, licensed profession or occupation~~ *professions or occupations, whether licensed or not*;

~~(e) the degree, if any, to which licensing would restrict entry into the profession or occupation for reasons other than public health, safety, or welfare or the common good;~~

~~(f) the specialized skills or training required for the profession or occupation;~~

~~(g) the proposed qualifications for licensure;~~

(f) an analysis of the impact licensure would have on the type, cost, and availability of services to consumers, the number of providers currently in the market, and other impacts on market conditions;

~~(h)~~*(g)* ~~whether~~ a *description of any* licensure ~~exception~~ *exceptions;* ~~would be provided to existing practitioners and whether those eligible for the exception~~

(h) existing practitioners and the date by which they would be required to meet proposed qualifications ~~at a certain time~~;

(i) a list of other states that license the profession or occupation;

(j) regulatory alternatives other than licensing that are available to the practitioners of the profession or occupation; ~~and~~

(k) previous efforts, if any, to regulate the profession or occupation*; and*

(l) whether the profession or occupation could be regulated by an existing licensing board or licensing program.

~~(3)~~*(2)* ~~In order to help in the determination of licensing~~ *To estimate initial* costs, the ~~letter of intent~~ *report* must ~~contain a good faith effort to provide answers to the following questions~~ *address*:

(a) ~~how many~~ *the number of* licensees ~~are~~ anticipated~~, including the number of practitioners in Montana~~ *and a basis for the estimate*;

(b) ~~what is~~ *if a licensing board is proposed,* the proposed makeup of the licensing board *membership*; and

(c) ~~what are~~ the projected annual licensing fees based on information from the department of labor and industry for all costs associated with a *licensing* board *or licensing program* of the projected size.

~~(4) After receiving a copy of the responses to subsections (2), (3)(a), and (3)(b), the department of labor and industry shall assist those developing the letter of intent under 2-8-403 or this section with the responses to subsection (3)(c) of this section.~~

~~(5) For the purposes of this section, a letter of intent is a public record.~~

(3) If information is requested of the department of labor and industry in making a report under this section, the department may charge reasonable fees commensurate with the costs of producing the information."

Section 5. Section 2-15-1730, MCA, is amended to read:

"**2-15-1730. Alternative health care board ~~-- composition -- terms -- allocation~~.** (1) ~~There~~ *In accordance with [section 1], there* is an alternative health care board.

(2) The board consists of six members ~~appointed by the governor with the consent of the senate. The members are~~:

(a) two ~~persons~~ *members* from each of the health care professions regulated by the board ~~who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board~~;

~~(b) one public member who is not a member of a profession regulated by the board; and~~

~~(c)~~*(b)* one member who is a ~~Montana~~ physician whose practice includes obstetrics*; and*

(c) one public member.

~~(3) The members must have been residents of this state for at least 3 years before appointment to the board.~~

~~(4) All members shall serve staggered 4-year terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only,~~ as prescribed in 2-15-121."

Section 6. Section 2-15-1731, MCA, is amended to read:

"**2-15-1731. Board of medical examiners.** (1) ~~There~~ *In accordance with [section 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~~ *doctors 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 care provider, as defined in 50-6-202*, who may be a volunteer emergency care provider*; and

(h) two *public* 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 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)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 7. Section 2-15-1732, MCA, is amended to read:

"**2-15-1732. Board of dentistry.** (1) ~~There~~ *In accordance with [section 1], there* is a board of dentistry.

(2) The board consists of ~~five dentists, one denturist, two dental hygienists, and two public members, one of whom must be a senior citizen. All members are appointed by the governor with the consent of the senate. Each licensed member must be licensed to practice as a dentist, denturist, or dental hygienist in this state, must have actively practiced in this state for at least 5 continuous years immediately before the member's appointment, and must be actively engaged in practice while serving on the board. Each member must be a resident of this state.~~ *ten members:*

(a) five dentists;

(b) one denturist;

(c) two dental hygienists; and

(d) two public members.

~~(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.~~

~~(4) The governor shall fill any vacancy within 30 days.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 8. Section 2-15-1733, MCA, is amended to read:

"**2-15-1733. Board of pharmacy.** (1) ~~There~~ *In accordance with [section 1], there* is a board of pharmacy.

(2) The board consists of ~~seven members appointed by the governor with the consent of the senate. Four members must be licensed pharmacists, one member must be a registered pharmacy technician, and two members must be from the general public~~. *six members:*

(a) ~~Each licensed pharmacist member must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. Each licensed pharmacist member must have at least 5 consecutive years of practical experience as a pharmacist immediately before appointment to the board. A licensed pharmacist member who, during the member's term of office, ceases to be actively engaged in the practice of pharmacy in this state must be automatically disqualified from membership on the board~~. *four pharmacists;*

(b) ~~A registered~~ *one* pharmacy technician ~~member must have at least 5 consecutive years of practical experience as a pharmacy technician immediately before appointment to the board. A registered pharmacy technician member who, during the member's term of office, ceases to be actively engaged as a pharmacy technician in this state must be automatically disqualified from membership on the board.~~*; and*

(c) ~~Each~~ *one* public member ~~of the board must be a resident of the state and may not be or ever have been:~~.

~~(i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;~~

~~(ii) a person having any material financial interest in the providing of pharmacy services; or~~

~~(iii) a person who has engaged in any activity directly related to the practice of pharmacy.~~

~~(3) Members shall serve staggered 5-year terms. A member may not serve more than two consecutive full terms. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.~~

~~(4) A member must be removed from office by the governor:~~

~~(a) upon proof of malfeasance or misfeasance in office, after reasonable notice of charges against the member and after a hearing; or~~

~~(b) upon refusal or inability to perform the duties of a board member in an efficient, responsible, and professional manner.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 9. Section 2-15-1734, MCA, is amended to read:

"**2-15-1734. Board of nursing.** (1) ~~There~~ *In accordance with [section 1], there* is a board of nursing.

(2) The board consists of ~~nine~~ *eight* members ~~appointed by the governor with the consent of the senate~~. The members are:

(a) five registered professional nurses, ~~of whom at least~~ *including:*

(i) at least one ~~must have had at least 5 years~~ *with experience* in ~~administrative~~ *administration*, teaching, or ~~supervisory experience~~ *supervision* in one or more schools of nursing~~,~~*;*

(ii) at least one ~~must be an~~ advanced practice registered nurse~~,~~*;*

(iii) at least one ~~must be~~ engaged in nursing practice in a rural health care facility~~,~~*;* and

(iv) at least one ~~must be currently~~ engaged in the administration, supervision, or provision of direct client care~~. Each member who is a registered professional nurse must:~~

~~(i) be a graduate of an approved school of nursing;~~

~~(ii) be a licensed registered professional nurse in this state;~~

~~(iii) have had at least 5 years' experience in nursing following graduation; and~~

~~(iv) be currently engaged in the practice of professional nursing and have practiced for at least 5 years.~~*;*

(b) ~~two practical nurses. Each must:~~ *two practical nurses; and*

~~(i) be a graduate of a school of practical nursing;~~

~~(ii) be a licensed practical nurse in this state;~~

~~(iii) have had at least 5 years' experience as a practical nurse; and~~

~~(iv) be currently engaged in the practice of practical nursing and have practiced for at least 5 years.~~

(c) ~~two public members who are not medical practitioners, involved in the practice of nursing or employment of nursing, or administrators of Montana health care facilities~~ *one public member*.

~~(3) All members must have been residents of this state for at least 1 year before appointment and must be citizens of the United States.~~

~~(4) All members shall serve staggered 4-year terms, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 10. Section 2-15-1735, MCA, is amended to read:

"**2-15-1735. Board of nursing home administrators.** (1) ~~There~~ *In accordance with [section 1], there* is a board of nursing home administrators.

(2) The board consists of six ~~voting~~ members ~~appointed by the governor with the consent of the senate.~~*:*

(a) ~~Three members must be~~ *three* nursing home administrators*,*~~. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other~~

(b) two ~~members must be~~ representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients ~~and~~ *that* may not be from the same profession or have a financial interest in a nursing home*; and*

(c) one public member.

~~(3) The director of the department of public health and human services or the director's designee is an ex officio, nonvoting member of the board.~~

~~(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member must be filled by the governor for the unexpired term.~~

~~(5) Appointive members may be removed by the governor only for cause.~~

~~(6)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 11. Section 2-15-1736, MCA, is amended to read:

"**2-15-1736. Board of optometry.** (1) ~~There~~ *In accordance with [section 1], there* is a board of optometry.

(2) The board consists of five members ~~appointed by the governor with the consent of the senate.~~*:*

(a) ~~Four members must be registered~~ *four* optometrists ~~of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office.~~*; and*

(b) ~~One~~ *one public* member ~~must be a representative of the public who is not engaged in the practice of optometry~~.

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

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 12. Section 2-15-1737, MCA, is amended to read:

"**2-15-1737. Board of chiropractors.** (1) ~~There~~ *In accordance with [section 1], there* is a board of chiropractors.

(2) The board consists of five members ~~appointed by the governor with the consent of the senate.~~*:*

(a) ~~Four members must be practicing~~ *four* chiropractors ~~of integrity and ability who are residents of this state and who have practiced chiropractic continuously in this state for at least 1 year.~~*; and*

(b) ~~One~~ *one public* member ~~must be a representative of the public who is not engaged in the practice of chiropractic~~.

~~(3) Each member shall serve for a term of 3 years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.~~

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 13. Section 2-15-1738, MCA, is amended to read:

"**2-15-1738. Board of radiologic technologists.** (1) ~~There~~ *In accordance with [section 1], there* is a board of radiologic technologists.

(2) The board consists of ~~seven~~ *five* members ~~appointed by the governor with the consent of the senate, including~~:

(a) ~~a~~ *one* radiologist ~~licensed to practice medicine in Montana~~;

(b) ~~a person granted a permit issued by the board pursuant to 37-14-306~~ *one limited permit technician*;

~~(c) a public member; and~~

~~(d)~~*(c)* ~~four licensed~~ *two* radiologic technologists ~~registered with the American registry of radiologic technologists (ARRT), including one radiologist assistant or radiology practitioner assistant licensed under 37-14-313~~*; and*

(d) one public member.

~~(3) Vacancies in unexpired terms must be filled for the remainder of the term.~~

~~(4) Each member shall serve 3-year terms.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 14. Section 2-15-1739, MCA, is amended to read:

"**2-15-1739. Board of speech-language pathologists and audiologists.** (1) ~~There~~ *In accordance with [section 1], there* is a board of speech-language pathologists and audiologists.

(2) The board consists of five members ~~who shall~~:

(a) ~~be appointed by the governor with the consent of the senate~~ *two speech-language pathologists*;

(b) ~~have been residents of this state for at least 1 year immediately preceding their appointment~~ *two audiologists*; and

(c) ~~have been engaged in rendering services to the public, teaching, or performing research in the field of speech-language pathology or audiology for at least 5 years immediately preceding their appointment~~ *one public member*.

~~(3) At least two members of the board shall be speech-language pathologists and at least two shall be audiologists, with the remaining member to be a public member who is a consumer of speech-language pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members, except the public member, shall at all times be validly licensed in speech-language pathology or audiology.~~

~~(4) Appointments shall be for 3-year terms with no person eligible to serve more than two full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

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

"**2-15-1740. Board of hearing aid dispensers.** (1) ~~There~~ *In accordance with [section 1], there* is a board of hearing aid dispensers.

(2) The board consists of five members ~~appointed by the governor with the consent of the senate, including~~:

(a) three ~~members, each of whom must possess a current hearing aid dispenser license issued under Title 37, chapter 16, and have been a licensed hearing aid dispenser for at least 5 years before being appointed to the board~~ *hearing aid dispensers*; and

(b) two public members, ~~at least one of whom may not be or have been an otolaryngologist, a licensed hearing aid dispenser, or a licensed audiologist, and~~ at least one of whom must regularly use a hearing aid because of a demonstrated hearing impairment. ~~One public member may meet both the conditions in this subsection (2)(b).~~

~~(3) Each member shall serve for 3-year terms. A member may not be reappointed within 1 year after the expiration of the member's second consecutive full term.~~

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 16. Section 2-15-1741, MCA, is amended to read:

"**2-15-1741. Board of psychologists.** (1) ~~There~~ *In accordance with [section 1], there* is a board of psychologists.

(2) The board consists of six members ~~appointed by the governor with the consent of the senate.~~*:*

(a) ~~Two members must be~~ *two* ~~licensed~~ psychologists *engaged* in private practice~~.~~*;*

(b) one ~~member must be a licensed~~ psychologist *engaged* in public health~~.~~*;*

(c) one ~~member must be a licensed~~ psychologist engaged in the teaching of psychology~~.~~*;*

(d) one ~~member must be a~~ behavior analyst ~~licensed under Title 37, chapter 17, part 4.~~*;* and

(e) one *public* member ~~must be from the general public. A member may not serve more than two consecutive 5-year terms~~.

~~(3) Members shall serve staggered 5-year terms.~~

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only.~~ as prescribed in 2-15-121."

Section 17. Section 2-15-1742, MCA, is amended to read:

" **2-15-1742. (Temporary) Board of veterinary medicine.** ~~(1) There is a board of veterinary medicine.~~

~~(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom must be licensed veterinarians and one of whom must be a public member who is a consumer of veterinary services and who may not be a licensee of the board or of any other board under the department of labor and industry.~~

~~(3) Each veterinarian member must be a reputable licensed veterinarian who has graduated from a college that is authorized by law to confer degrees and that has educational standards equal to those approved by the American veterinary medical association. Each veterinarian member must have actually~~

~~and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before appointment.~~

~~(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.~~

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

2-15-1742. ~~(Effective January 1, 2023)~~ Board of veterinary medicine. (1) ~~There~~ *In accordance with [section 1], there* is a board of veterinary medicine.

(2) The board consists of ~~seven~~ *seven* members ~~appointed by the governor with the consent of the senate.~~*:*

(a) ~~Five members must be~~ *five* veterinarians ~~licensed under Title 37, chapter 18,~~*;*

(b) one ~~member must be a~~ veterinary technician ~~licensed under Title 37, chapter 18,~~*;* and

(c) one *public* member ~~must be a public member who is a consumer of veterinary services and is not a licensee of the board or of any other board under the department of labor and industry~~.

~~(3) (a) Each veterinarian board member must be a reputable licensed veterinarian who has graduated from a college that is authorized by law to confer degrees and that has educational standards equal to those approved by the American veterinary medical association. Each veterinarian board member must have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before appointment.~~

~~(b) The individual initially appointed as the licensed veterinary technician board member must have practiced in this state for at least 5 years prior to January 1, 2023, and shall obtain a license under Title 37, chapter 18, as a licensed veterinary technician by the time the individual becomes a board member. An individual appointed subsequent to the initial appointment must only meet the requirement that the individual be a veterinary technician licensed under Title 37, chapter 18.~~

~~(4) (a) Each member term is 5 years. A member may be reappointed.~~

~~(b) The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as provided in 2-15-121."

Section 18. Section 2-15-1743, MCA, is amended to read:

"**2-15-1743. Board of funeral service.** (1) ~~There~~ *In accordance with [section 1], there* is a board of funeral service.

(2) The board consists of six members ~~appointed by the governor with the consent of the senate.~~*:*

(a) ~~Three~~ *three* ~~members must be licensed~~ morticians*.;*

~~One member must be a representative of the public who is not engaged in the practice of mortuary science or funeral directing.~~

(b) ~~One member must be a licensed~~ *one* crematory operator ~~or crematory technician~~ or a mortician ~~who is~~ engaged in a crematory operation*.;*

(c) ~~One member must be a~~ *one* representative of a cemetery company governed by Title 37, chapter 19, part 8*; and*

(d) one public member.

~~(3) Board members shall serve staggered 5-year terms.~~

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 19. Section 2-15-1744, MCA, is amended to read:

"**2-15-1744. Board of behavioral health.** (1) ~~(a) The governor shall appoint, with the consent of the senate,~~ *In accordance with [section 1], there is* a board of behavioral health ~~consisting of 11 members~~.

(2) The board consists of 11 members:

~~(b)~~*(a)* ~~Three members must be licensed~~ *three clinical* social workers~~, and~~*;*

(b) three ~~must be licensed~~ professional counselors~~.~~*;*

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

~~(d)~~*(c)* ~~Two members must be licensed~~ *two* addiction counselors~~.~~*;*

~~(e)~~*(d)* ~~One member must be a~~ *one* certified behavioral peer support specialist~~.~~*;*

~~(f)~~*(e)* ~~One member must be a licensed~~ *one* marriage and family therapist*; and*

(f) one public member.

~~(2)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as provided in 2-15-121.

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

Section 20. Section 2-15-1747, MCA, is amended to read:

"**2-15-1747. Board of barbers and cosmetologists.** (1) ~~There~~ *In accordance with [section 1], there* is a board of barbers and cosmetologists.

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

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

(b) one ~~licensed~~ esthetician ~~who has been a resident of this state for at least 5 years and has been actively engaged in the profession of esthetics for at least 5 years immediately prior to being appointed to the board~~;

(c) two ~~licensed~~ barbers or barbers nonchemical~~, each of whom has been a resident of this state for at least 5 years and has been actively engaged in the profession of barbering for at least 5 years immediately prior to appointment to the board~~;

(d) one ~~licensed~~ manicurist ~~who has been a resident of this state for at least 5 years and has been actively engaged in the profession of manicuring for at least 5 years immediately prior to being appointed to the board~~;

(e) two members~~, either licensed or not licensed under Title 37, chapter 31,~~ who are affiliated, ~~as defined in 37-31-101,~~ with a school ~~for at least 5 years immediately prior to being appointed to the board~~ *regulated under Title 37, chapter 31*; and

(f) one *public* member ~~of the public who is not licensed under Title 37, chapter 31~~.

~~(3) If there is not a licensed barber, barber nonchemical, esthetician, or manicurist who is qualified and willing to serve on the board in one of the positions under subsections (2)(b), (2)(c), and (2)(d), the governor may appoint a cosmetologist otherwise qualified under this section to fill the position.~~

~~(4) Each member shall serve for a term of up to 5 years. The terms must be staggered.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 21. Section 2-15-1748, MCA, is amended to read:

"**2-15-1748. Board of physical therapy examiners.** (1) ~~There~~ *In accordance with [section 1], there* is a board of physical therapy examiners.

(2) The board consists of five members ~~appointed by the governor with the consent of the senate for terms of 3 years. The members are~~:

(a) four physical therapists ~~licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board~~; and

(b) one *public* member ~~of the general public who is not a physician or a physical therapist~~.

~~(3) Each member must have been a resident of Montana for the 3 years preceding appointment to the board.~~

~~(4) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may be made only for the unexpired portions of the term.~~

~~(5) A member may not be appointed for more than two consecutive terms.~~

~~(6) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.~~

~~(7) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.~~

~~(8) The board shall provide for its organizational structure by rule, which must include a presiding officer, vice presiding officer, and secretary-treasurer.~~

~~(9)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 22. Section 2-15-1749, MCA, is amended to read:

"**2-15-1749. Board of occupational therapy practice.** (1) ~~There~~ *In accordance with [section 1], there* is a board of occupational therapy practice.

(2) The board consists of five members ~~appointed by the governor. The members are~~:

(a) three occupational therapists ~~licensed under Title 37, chapter 24, who are actively engaged in the practice or teaching of occupational therapy~~; and

(b) two *public* members ~~of the general public with an interest in the rights of the consumers of health services~~.

~~(3) The Montana occupational therapy association may submit names of nominees under subsection (2)(a) of this section to the governor as provided in 37-1-132.~~

~~(4) Each appointment is subject to confirmation by the senate then meeting in regular session or next meeting in regular session following appointment.~~

~~(5) Members shall serve staggered 4-year terms. A term begins on the first day of the calendar year and ends on the last day of the calendar year or when a successor is appointed. A member who has served two successive complete terms is not eligible for reappointment until after 1 year.~~

~~(6) The governor may, after hearing, remove a member for neglect of duty or other just cause.~~

~~(7)~~*(3)* The board is allocated to the department of labor and industry ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 23. Section 2-15-1750, MCA, is amended to read:

"**2-15-1750. Board of respiratory care practitioners.** (1) ~~There~~ *In accordance with [section 1], there* is a board of respiratory care practitioners. ~~The board consists of five members appointed by the governor with the consent of the senate. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.~~

(2) The board consists of *five members*:

(a) ~~subject to subsection (3),~~ three respiratory care practitioners~~, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding appointment to the board~~;

(b) one respiratory care practitioner ~~who has engaged in the practice of respiratory care for at least 3 years immediately prior to appointment and~~ who specializes in pulmonary functions or sleep studies; and

(c) one *public* member ~~of the public who is not a member of a health care profession~~.

~~(3) At least one of the members appointed under subsection (2)(a) must have passed the registry examination for respiratory therapists administered by the national board for respiratory care, and at least one of the members must have passed the entry-level examination for certified respiratory therapists administered by the national board for respiratory care.~~

~~(4) Members shall serve staggered 4-year terms.~~

~~(5)~~*(3)* The board is allocated to the department ~~of labor and industry for administrative purposes only~~ as provided in 2-15-121."

Section 24. Section 2-15-1751, MCA, is amended to read:

"**2-15-1751. Board of sanitarians.** (1) ~~There~~ *In accordance with [section 1], there* is a board of sanitarians.

(2) The board consists of five members ~~appointed by the governor with the consent of the senate. Each member must be a resident of this state, and~~*:*

(a) three ~~of the members must be registered~~ sanitarians.*; and*

(b) ~~Two~~ *two public* members ~~must be from the public but not sanitarians and shall represent the interests of the public at large. Each sanitarian member must have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana~~.

~~(3) Members shall serve staggered 3-year terms that expire on July 1 of a given year.~~

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 25. Section 2-15-1753, MCA, is amended to read:

"**2-15-1753. Board of clinical laboratory science practitioners.** (1) ~~There~~ *In accordance with [section 1], there* is a board of clinical laboratory science practitioners.

(2) The board ~~is composed~~ *consists* of five members ~~who have been residents of this state for at least 2 years prior to appointment.~~*:*

~~(3) Members are appointed by the governor, with consent of the senate. The members are:~~

(a) four clinical laboratory science practitioners ~~who hold active licenses as clinical laboratory science practitioners in Montana~~; and

(b) one public member ~~who is not associated with or financially interested in the practice of clinical laboratory science~~.

~~(4) Members shall serve staggered 4-year terms. A member may not serve more than two consecutive terms.~~

~~(5) Whenever a vacancy occurs on the board during a term of office, the governor shall appoint a successor with similar qualifications for the remainder of the unexpired term.~~

~~(6)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~, as provided in 2-15-121.

~~(7) Members of the board are entitled to compensation and travel expenses as provided for in 2-18-501 through 2-18-503.~~"

Section 26. Section 2-15-1756, MCA, is amended to read:

"**2-15-1756. Board of public accountants.** (1) ~~There~~ *In accordance with [section 1], there* is a board of public accountants.

(2) The board consists of ~~seven~~ *five* members ~~appointed by the governor. The members are~~:

(a) ~~five~~ *four* certified public accountants ~~licensed under Title 37, chapter 50, who are actively engaged in the practice of public accounting and who have held a valid license for at least 5 years before being appointed~~; and

(b) ~~two members of the general public who are not engaged in the practice of public accounting~~ *one public member*.

~~(3) Professional associations of public accountants may submit to the governor a list of names of two candidates for each position from which the appointment pursuant to subsection (2)(a) may be made. However, the governor is not restricted to the names on the list.~~

~~(4) Each appointment is subject to confirmation by the senate and must be submitted for consideration at the next regular session following appointment.~~

~~(5) The members shall serve staggered 4-year terms. The governor may remove a member for neglect of duty or other just cause.~~

~~(6)~~*(3)* The board is allocated to the department of labor and industry ~~for administrative purposes only~~ as prescribed in 2-15-121[, except that the provisions of 2-15-121(2)(b) do not apply]. (Bracketed language terminates September 30, 2023--sec. 5, Ch. 50, L. 2019.)"

Section 27. Section 2-15-1757, MCA, is amended to read:

"**2-15-1757. Board of realty regulation.** (1) ~~There~~ *In accordance with [section 1], there* is a board of realty regulation.

(2) The board consists of ~~seven~~ *five* members ~~appointed by the governor with the consent of the senate.~~*:*

(a) ~~Five members must be licensed~~ *four* real estate brokers, salespeople, or property managers ~~who are actively engaged in the real estate business as a broker, a salesperson, or a property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, a salesperson, or a property manager. The members must be residents of this state.~~*; and*

(b) one public member.

~~(3) The members shall serve staggered terms of 4 years. A member may not serve more than two consecutive terms or any portion of two consecutive terms.~~

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 28. Section 2-15-1758, MCA, is amended to read:

"**2-15-1758. Board of real estate appraisers.** (1) ~~There~~ *In accordance with [section 1], there* is a board of real estate appraisers.

(2) The board consists of ~~seven~~ *five* members ~~appointed by the governor with the consent of the senate.~~*:*

~~(3)~~*(a)* ~~Five members must be licensed or certified~~ *four* real estate appraisers ~~for a minimum of 3 years.~~*, of whom two members are certified general appraisers and two members are certified residential appraisers;* and

(b) ~~two members must be representatives of the public who are not engaged in the occupation of real estate appraisal~~ *one public member*.

~~(4) A screening panel of the board, established pursuant to 37-1-307, must be composed of at least three members and shall include one member of the board who represents the public and is not engaged in the occupation of real estate appraisal. Any determination that a licensee has violated a statute or rule in a manner that justifies disciplinary proceedings must be concurred in by a majority of the members of the screening panel.~~

~~(5) Members shall serve staggered 3-year terms. A member may not serve for more than three consecutive terms.~~

~~(6)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~, as prescribed in 2-15-121.

~~(7) A board member may be removed from the board by the governor for neglect or cause.~~

~~(8) The board shall meet at least once each calendar quarter to transact its business.~~

~~(9) The board shall elect a presiding officer from among its members.~~

~~(10) A board member must receive compensation and travel expenses, as provided in 37-1-133.~~"

Section 29. Section 2-15-1761, MCA, is amended to read:

"**2-15-1761. Board of architects and landscape architects.** (1) ~~There~~ *In accordance with [section 1], there* is a board of architects and landscape architects.

(2) The board consists of ~~six~~ *six* members ~~appointed by the governor with the consent of the senate. The members are~~:

(a) ~~two licensed~~ *three* architects ~~who have been in continuous practice for 3 years before their appointment~~;

~~(b) one licensed architect who is on the staff of the Montana state university-Bozeman school of architecture~~;

~~(c) one representative of the public who is not engaged in or directly connected with the practice of architecture or landscape architecture; and~~

~~(d)~~*(b)* two ~~licensed~~ landscape architects*; and*

(c) one public member.

~~(3) Each member must have been a resident of Montana for 4 years prior to appointment.~~

~~(4) Each member shall serve for a term of 3 years.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 30. Section 2-15-1763, MCA, is amended to read:

"**2-15-1763. Board of professional engineers and professional land surveyors.** (1) ~~There~~ *In accordance with [section 1], there* is a board of professional engineers and professional land surveyors.

(2) The board consists of nine members ~~appointed by the governor with the consent of the senate. The members are~~:

(a) five professional engineers ~~who have been engaged in the practice of engineering for at least 12 years and~~ who have been in responsible charge of engineering ~~teaching or important engineering work for at least 5 years and licensed in Montana for at least 5 years~~ *work or have teaching experience at one or more schools of engineering*. No more than two of these members may be from the same branch of engineering.

(b) two professional and practicing land surveyors ~~who have been engaged in the practice of land surveying for at least 12 years and~~ who have been in responsible charge of land surveying ~~or important land surveying work for at least 5 years and licensed in Montana for at least 5 years~~; *and*

(c) two ~~representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying~~ *public members*.

(3) Each member must be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, may not be reappointed.

~~(4) (a) Except as provided in subsection (4)(b), each member shall serve for a term of 4 years.~~

~~(b) The governor may remove a member for misconduct, incompetency, or neglect of duty or for any other sufficient cause and may shorten the term of~~

~~one public member so that it is not coincident with the term of the other public member.~~

~~(5)~~*(4)* The board is allocated to the department ~~for administrative purposes only,~~ as prescribed in 2-15-121."

Section 31. Section 2-15-1764, MCA, is amended to read:

"**2-15-1764. State electrical board.** (1) ~~There~~ *In accordance with [section 1], there* is a state electrical board.

(2) The board consists of five members ~~appointed by the governor with the consent of the senate, who must be residents of this state.~~*:*

~~Two members of the board shall represent the public.~~

(a) ~~Two members of the board must be licensed electricians. One member must be a~~ *one* master ~~licensed~~ electrician*;*

(b) ~~or a licensed electrician~~ *one journeyman electrician;*

(c) one electrician who *is a master licensed electrician or a licensed electrician who* holds an unlimited electrical contractor license*; and*

(d) two public members.

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

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 32. Section 2-15-1765, MCA, is amended to read:

"**2-15-1765. Board of plumbers.** (1) ~~There~~ *In accordance with [section 1], there* is a board of plumbers.

(2) The board consists of ~~nine~~ *seven* members ~~appointed by the governor with the consent of the senate. The members are~~:

(a) two master plumbers ~~and~~*;*

(b) two ~~journeyman~~ *journey level* plumbers ~~who are 18 years of age or older, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment~~;

~~(b)~~*(c)* one ~~registered~~ professional engineer qualified in mechanical engineering;

~~(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment; and~~

(d) one representative of the department of environmental quality, who must have experience in the regulation of drinking water systems*; and*

(e) one public member.

~~(3) The appointed members of the board shall serve for terms of 4 years.~~

~~(4)~~*(3)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 33. Section 2-15-1771, MCA, is amended to read:

"**2-15-1771. Board of athletic trainers.** (1) ~~There~~ *In accordance with [section 1], there* is a board of athletic trainers.

(2) The board ~~is composed~~ *consists* of five members ~~appointed by the governor as follows~~:

(a) one ~~member who is a~~ physician ~~licensed under Title 37, chapter 3~~, preferably with a background in the practice of sports medicine;

(b) three ~~members who are~~ athletic trainers ~~who have been engaged in the practice of athletic training in the state for at least 2 years prior to being appointed. After the initial appointments are made to establish the board, each of the three members must be licensed as an athletic trainer under Title 37, chapter 36. Of these three members, at the time of appointment~~:

(i) one ~~must be employed by or retired from employment with a~~ *athletic trainer with experience in one or more* postsecondary ~~institution in Montana~~ *educational institutions*;

(ii) one ~~must be employed in or retired from a~~ *athletic trainer with experience in one or more* secondary ~~school in Montana~~ *schools*; and

(iii) one ~~must be employed by or retired from a~~ *athletic trainer with experience in one or more* health care ~~facility~~ or ~~an~~ athletic ~~facility in Montana~~ *facilities*~~.~~*; and*

(c) one *public* member ~~of the public who is not engaged in or directly connected with the practice of athletic training~~.

~~(3) There may be no more than one retired athletic trainer serving on the board at anytime.~~

~~(4) A vacancy on the board must be filled for an unexpired term to maintain the representation provided in subsection (2).~~

~~(5)~~*(3)* The board is ~~attached~~ *allocated to the department* ~~for administrative purposes only~~, as prescribed in 2-15-121~~, to the department of labor and industry~~.

~~(6)~~*(4)* Members must be compensated as provided in 2-18-501 through 2-18-503.

~~(7) Members shall serve 4-year, staggered terms. A member may be reappointed for one consecutive term. A member who is reappointed must be eligible under the same criteria as when first appointed.~~

~~(8) For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.~~

~~(9) The governor may remove a member from the board for neglect of duty, for incompetency, or for cause.~~"

Section 34. Section 2-15-1773, MCA, is amended to read:

"**2-15-1773. Board of outfitters.** (1) ~~There~~ *In accordance with [section 1], there* is a board of outfitters.

(2) The board consists of ~~the following~~ five members ~~to be appointed by the governor with the consent of the senate~~:

(a) one ~~outfitter licensed for both~~ *outfitter licensed for both* hunting and fishing, representing a public land hunting and fishing outfitter knowledgeable in government permitting ~~and preferably with a packing endorsement~~ *and preferably with a packing endorsement*;

(b) one ~~outfitter licensed only as a~~ fishing outfitter;

(c) one outfitter representing a private land hunting outfit;

(d) one ~~outfitter licensed for both~~ hunting and fishing *outfitter*, with their business being predominately fishing; and

(e) ~~one member of the general public who is a Montana-based business owner who engages in nonoutfitted business that is reliant on the local outdoor recreation industry~~

(e) one public member who is a Montana-based business owner who engages in nonoutfitted business that is reliant on the local outdoor recreation industry.

~~(3) A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.~~

~~(4) A vacancy on the board must be filled in the same manner as the original appointment.~~

~~(5) The members shall serve staggered 3-year terms and take office on the day they are appointed.~~

~~(6)~~*(3)* The board is allocated to the department ~~of labor and industry for administrative purposes only~~ as prescribed in 2-15-121.

~~(7) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.~~"

Section 35. Section 2-15-1781, MCA, is amended to read:

"**2-15-1781. Board of private security.** (1) ~~There~~ *In accordance with [section 1], there* is a board of private security.

(2) The board consists of seven ~~voting~~ members ~~appointed by the governor with the consent of the senate. The members shall represent~~:

(a) one ~~contract~~ security company ~~or proprietary security organization, as defined by 37-60-101~~;

(b) one electronic security company~~, as defined by 37-60-101~~;

(c) one city police ~~department~~ *chief*;

(d) one county ~~sheriff's office~~ *sheriff*;

~~(e) one member of the public~~;

~~(f)~~*(e)* one member of the Montana public safety officer standards and training council; ~~and~~

~~(g)~~*(f)* ~~a licensed~~ *one* private investigator ~~or a registered process server~~*; and*

(g) one public member.

~~(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.~~

~~(4) The appointed members of the board shall serve for terms of 3 years. The terms of board members must be staggered.~~

~~(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.~~

~~(6) A vacancy on the board must be filled in the same manner as the original appointment and may be only for the unexpired portion of the term.~~

~~(7)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~as prescribed in 2-15-121."

Section 36. Section 2-15-1782, MCA, is amended to read:

"**2-15-1782. Board of massage therapy.** (1) ~~There~~ *In accordance with [section 1] there* is a board of massage therapy.

(2) The board consists of five members ~~appointed by the governor with the consent of the senate. The members are~~:

~~(a) one representative of the public who is not a medical practitioner or an owner of a school that educates massage therapists and is not engaged in or directly connected with the practice of massage therapy;~~

~~(b)~~*(a)* one ~~member who is a licensed~~ health care provider ~~in good standing in Montana and~~ who is not an owner of a school that educates massage therapists; ~~and~~

~~(c)~~*(b)* three massage therapists, none of whom may be an owner of a school that educates massage therapists~~, who have been actively engaged in the practice of massage therapy for at least 3 years prior to being appointed to the board. None of the three massage therapists may belong to the same national professional association. After the initial appointments are made to establish the board, each of the three members must be licensed as a massage therapist under Title 37, chapter 33~~. *None of the three massage therapists may belong to the same national professional association.*

(c) one public member.

~~(3) Members shall serve 4-year, staggered terms. The governor may remove a member from the board for neglect of duty required by law, for incompetence, or for unprofessional or dishonorable conduct.~~

~~(4) The governor shall make the initial appointments to the board as follows:~~

~~(a) one person who is a massage therapist to serve a 2-year term;~~

~~(b) one person who is a massage therapist to serve a 3-year term; and~~

~~(c) one person who is a massage therapist to serve a 4-year term.~~

~~(5) At the expiration of terms provided in subsection (4), the governor shall appoint the person designated to fill each position to a 4-year term.~~

~~(6)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 37. Section 37-1-133, MCA, is amended to read:

"**37-1-133. Board members' compensation and expenses.** Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive ~~$50~~ *$100* per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but ~~shall~~ *must* receive travel expenses."

Section 38. Repealer. The following section of the Montana Code Annotated is repealed:

2-8-403. Intent to combine profession or occupation with existing board.

Section 39. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1, apply to [sections 1 and 2].

Section 40. Saving clause. (1) To the extent that [section 1] applies to board member term length and the number of terms for which a board member may be appointed, [section 1] solely applies to appointments made on or after [the effective date of this act].

(2) Nothing in [sections 7, 8, 9, 13, 17, 26, 27, 28, 29, and 32] reduces the term, authority, or obligations of a board member who was appointed before [the effective date of this act]. Elimination of a board position occurs at the earlier of:

(a) the resignation of the first board member who meets the qualifications of the eliminated position; or

(b) the ending of the appointed term of the first board member who meets the qualifications of the eliminated position.

(3) Staggering of board member terms must be effectuated during the appointment process by the governor designating the term start and end dates. The governor shall, as closely as possible, designate term start and end dates to appoint one-quarter of each board each calendar year.

Section 41. Coordination instruction. If both Senate Bill No. 453 and [this act] are passed and approved and if both amend 2-15-1730, then [section 1 of Senate Bill No. 453], amending 2-15-1730, is void, and [section 5 of this act], amending 2-15-1730, must be amended as follows:

"2-15-1730. Alternative health care board ~~-- composition -- terms -- allocation~~. (1) ~~There~~ *In accordance with [section 1], there* is an alternative health care board.

(2) The board consists of ~~six~~ *eight* members ~~appointed by the governor with the consent of the senate. The members are~~:

(a) two ~~persons~~ *members* from each of the health care professions regulated by the board ~~who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board~~;

~~(b) one public member who is not a member of a profession regulated by the board; and~~

~~(c)~~*(b)* one member who is a ~~Montana~~ physician whose practice includes obstetrics*; and*

(c) one public member.

~~(3) The members must have been residents of this state for at least 3 years before appointment to the board.~~

~~(4) All members shall serve staggered 4-year terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.~~

~~(5)~~*(3)* The board is allocated to the department ~~for administrative purposes only,~~ as prescribed in 2-15-121."

Section 42. Coordination instruction. If both Senate Bill No. 453 and [this act] are passed and approved and if both amend 2-15-1731, then [section 2 of Senate Bill No. 453], amending 2-15-1731, is void, and [section 6 of this act], amending 2-15-1731, must be amended as follows:

"2-15-1731. Board of medical examiners. (1) ~~There~~ *In accordance with [section 1], there is a Montana state board of medical examiners.*

(2) The board consists of ~~13~~ *12* 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~~ *doctors* of medicine, including one ~~member~~ with experience in emergency medicine*, none of whom may be from the same county*;

(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)~~*(f)* one ~~member who is a volunteer~~ emergency care provider, as defined in 50-6-202*, who may be a volunteer emergency care provider*; and

~~(h)~~*(g)* two ~~members of the general public who are not medical practitioners~~ *public members*.

~~(4) (a) The members having the degree of doctor of medicine may not be from the same county.~~

~~(b) The volunteer emergency 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)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 43. Coordination instruction. If both Senate Bill No. 456 and [this act] are passed and approved and if Senate Bill No. 456 repeals 2-15-1740, then [section 15 of this act], amending 2-15-1740, is void.

Section 44. Coordination instruction. If both Senate Bill No. 457 and [this act] are passed and approved and if Senate Bill No. 457 repeals 2-15-1751, then [section 24 of this act], amending 2-15-1751, is void.

Section 45. Coordination instruction. If both Senate Bill No. 455 and [this act] are passed and approved and if both amend 2-15-1757, then [section 9 of Senate Bill No. 455], amending 2-15-1757, is void, and [section 27 of this act], amending 2-15-1757, must be amended as follows:

"2-15-1757. Board of realty regulation. (1) ~~There~~ *In accordance with [section 1], there* is a board of realty regulation.

(2) The board consists of ~~seven~~ *five* members ~~appointed by the governor with the consent of the senate.~~*:*

(a) ~~Five members must be licensed~~ *four* real estate brokers~~,~~ *or* salespeople~~, or property managers who are actively engaged in the real estate business as a broker, a salesperson, or a property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker, a salesperson, or a property manager. The members must be residents of this state.~~*; and*

(b) one public member.

~~(3) The members shall serve staggered terms of 4 years. A member may not serve more than two consecutive terms or any portion of two consecutive terms.~~

~~(4)~~*(3)* The board is allocated to the department ~~for administrative purposes only~~ as prescribed in 2-15-121."

Section 46. Coordination instruction. If both Senate Bill No. 454 and [this act] are passed and approved, and if Senate Bill No. 454 repeals 2-15-1781, then [section 35 of this act], amending 2-15-1781, is void.

Section 47. 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 48. Effective date. [This act] is effective July 1, 2023.

Approved May 19, 2023

CHAPTER NO. 621

[HB 91]

AN ACT REVISING LAWS PROVIDING STATE AID TO PUBLIC LIBRARIES; INCLUDING CERTAIN ACCREDITED TRIBAL COLLEGE LIBRARIES IN THE DEFINITION OF PUBLIC LIBRARY; EXTENDING THE TERMINATION DATE FOR THE PER CAPITA STATE AID FORMULA FOR PUBLIC LIBRARIES; INCREASING THE PER RESIDENT AID AMOUNT; PROVIDING A REVISED STATUTORY APPROPRIATION; AMENDING SECTIONS 22-1-326 AND 22-1-327, MCA; AMENDING SECTION 5, CHAPTER 244, LAWS OF 2013, AND SECTION 1, CHAPTER 340, LAWS OF 2017; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 22-1-326, MCA, is amended to read:

"**22-1-326. State aid to public libraries.** (1) As used in 22-1-326 through 22-1-331, "public library" means a library created under Title 7 or under 22-1-301 through 22-1-317 *or an accredited tribal college library that provides services to the public.*

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries and public library districts created and operated under part 7 of this chapter. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries and public library districts;

(b) augment and extend services provided by public libraries and public library districts; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries or public library districts. The commission may withhold a distribution to a library or district that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if the decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329."

Section 2. Section 22-1-327, MCA, is amended to read:

"**22-1-327. State aid -- per capita -- per square mile.** (1) The commission shall distribute grants to public libraries and public library districts on a per capita and per square mile basis.

(2) The total amount of annual per capita and per square mile funding to public libraries for each fiscal year is the base amount of ~~40~~ *50* cents multiplied by the total number of residents of the state as determined by the most recent decennial census of the population produced by the U.S. bureau of the census.

(3) The amount determined under subsection (2) is statutorily appropriated, as provided in 17-7-502, from the general fund to the commission for distribution as state aid to public libraries. (Subsections (2) and (3) terminate July 1, ~~2023~~ *2029*--sec. 1, Ch. 340, L. 2017.)"

Section 3. Section 5, Chapter 244, Laws of 2013, is amended to read:

"**Section 5. Termination.** [This act] terminates July 1, ~~2017~~ *2029*."

Section 4. Section 1, Chapter 340, Laws of 2017, is amended to read:

"**Section 1.** Section 5, Chapter 244, Laws of 2013, is amended to read:

"**Section 5. Termination.** [This act] terminates July 1, ~~2017~~ *2023 2029*.""

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

Section 6. Effective date. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Sections 3 and 4] and this section are effective on passage and approval.

Approved May 19, 2023

CHAPTER NO. 622

[HB 97]

AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS; REVISING LAWS RELATED TO PRICE REDUCTION FOR QUANTITY SALES OF LIQUOR; REVISING ALCOHOL LICENSES PERTAINING TO GOLF COURSES; REVISING LAWS RELATED TO LIQUOR STORE AGENTS AND TABLE WINE; REVISING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-1-411, 16-2-201, 16-3-213, 16-3-302, 16-3-316, AND 16-3-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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 and on table wine shipped directly 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 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.

(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 *or that sells table wine to agency liquor stores for sale to consumers 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 or the table wine distributor to the penalties and interest provided for in 15-1-216.

(4) The tax paid by a winery 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.

(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.

(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 16-2-201, MCA, is amended to read:

"**16-2-201. Reduction for quantity sales of liquor.** A reduction of 8% of the posted price of liquor sold at an agency liquor store must be made for sales of liquor to a licensee purchasing liquor in unbroken case lots. *This reduction is limited to liquor designated by the department as regular product as defined by administrative rule.* No other reduction below the posted price may be made for sales of liquor."

Section 3. Section 16-3-213, MCA, is amended to read:

"**16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.** (1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit brewers and beer importers from engaging in the retail

sale of beer. This section does not prohibit breweries from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

(2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide production of not ~~less than 100 barrels or~~ *less than 200 gallons or* more than 60,000 barrels, including:

(i) the production of all affiliated manufacturers; and

(ii) beer purchased from any other beer producer to be sold by the brewery.

(b) A small brewery may, at one location for each brewery license and at no more than three locations including affiliated manufacturers, provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day for consumption on the premises or in prepared servings through curbside pickup, provided that the 48-ounce limit may not in any way limit a small brewery's sales as provided in 16-3-214(1)(a)(iii). No more than 2,000 barrels may be provided annually for on-premises consumption including all affiliated manufacturers.

(3) For the purposes of this section, "affiliated manufacturer" means a manufacturer of beer:

(a) that one or more members of the manufacturing entity have more than a majority share interest in or that controls directly or indirectly another beer manufacturing entity;

(b) for which the business operations conducted between or among entities are interrelated or interdependent to the extent that the net income of one entity cannot reasonably be determined without reference to operations of the other entity; or

(c) of which the brand names, products, recipes, merchandise, trade name, trademarks, labels, or logos are identical or nearly identical."

Section 4. Section 16-3-302, MCA, is amended to read:

"**16-3-302. Sale by retailer for consumption on premises.** (1) It is lawful for a licensed retailer to sell and serve beer, either on ~~draught~~ *draft* or in containers, to the public to be consumed on the premises of the retailer.

(2) It is lawful for a licensee who has an all-beverages license that the licensee uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:

(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; ~~and~~

(b) *upon department approval and submission of a fee, in an additional building or other structure, one per 9 holes of the golf course, that is designed to serve golfers during the course of play; and*

(c) at any place within the boundaries of the golf course, from a portable satellite vehicle or other movable satellite device that is moved from place to place~~, whether inside or outside of a building or other structure~~.

(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure."

Section 5. Section 16-3-316, MCA, is amended to read:

"**16-3-316. Fundraising events for nonprofit and tax-exempt organizations.** (1) A nonprofit organization governed under Title 35, chapter 2, or an organization designated as tax-exempt under the provisions of section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended, may raffle or auction alcoholic beverages at fundraising events. Any alcoholic beverage

raffled or auctioned must be given by the organization to the raffle or auction winner sealed in its original package.

(2) If the fundraising event is held on the premises of a business licensed under this code or on premises for which a permit has been issued under this code, the alcoholic beverage may not be consumed on the premises. An alcoholic beverage that is on a licensee's premises solely for a fundraising event under this section does not constitute a violation by the licensee of 16-3-301(1) or 16-6-303.

(3) A nonprofit or tax-exempt organization may hold no more than four events per calendar year at which alcoholic beverages are raffled or auctioned. The duration of each event must be announced at the time any raffle tickets are sold or auction bids are received. Raffles and auctions held pursuant to this section must be to directly support bona fide charitable, nonprofit, or tax-exempt activities.

(4) An alcoholic beverage for raffle or auction must be:

(a) acquired, whether by purchase or donation, by the organization from a retailer *or manufacturer* licensed under the provisions of this code~~, excluding a restaurant beer and wine licensee~~;

(b) ~~purchased~~ *acquired, whether by purchase at not less than the posted price or donation,* by the organization from an agency liquor store ~~at not less than the posted price~~; or

(c) received by the organization as a donation at no cost to the organization from any other person ~~except one licensed as a wholesaler or distributor under this code~~ *except one licensed as a wholesaler or distributor under this code.*

(5) No proceeds from the raffle or auction of alcoholic beverages may go to anyone who provided the alcoholic beverages to the organization for the raffle or auction.

(6) For a raffle or auction described in subsection (1), raffle tickets may not be sold to, and auction bids may not be solicited or received from, any person under 21 years of age. The organization raffling or auctioning alcoholic beverages may not sell, deliver, or give away any alcoholic beverage to a person under 21 years of age or to any person actually, apparently, or obviously intoxicated.

(7) As used in this section:

(a) "auction" means the sale of an item or items, which may include alcoholic beverages, whereby the item for sale is sold to the highest bidder at the bid price. An auctioned item or items may have a reserve price.

(b) "raffle" means an event in which a nonprofit or tax-exempt organization sells tickets and each ticket gives the purchaser of the ticket the chance to win a prize, which may include alcoholic beverages, with the winner determined by a random drawing."

Section 6. 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 *table* wine it produces at wholesale to *table* wine distributors *or liquor store agents*;

(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;

(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; or

(j) offer wine in its original packaging, prepared servings, or growlers for curbside pickup between 8 a.m. and 2 a.m.

(2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers *or liquor store agents* 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 *9-liter* cases a year;

(ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer *or liquor store agent*; or

(iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer *or liquor store agent* 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 *or liquor store agent*; and

(C) the shipments delivered by common carrier do not exceed 4,500 *9-liter* cases a year.

(b) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors*,* ~~and~~ retailers, *and liquor store agents,* 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~~, *or liquor store agent*; and

(iii) signed for by the wine distributor*,* ~~or~~ retailer*, or liquor store agent,* or *by* its employee or agent.

(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, pursuant to 16-1-411, electronically file a report in the manner and form prescribed by the department, reporting the amount of wine or hard cider, or both, that it shipped in the state during the preceding period, including the names and addresses of consignees*,* ~~or~~ retailers, *or liquor store agents,* and other information that the department may determine to be necessary to ensure that distribution of wine or hard cider, or both, within this state conforms to the requirements of this code."

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 19, 2023

CHAPTER NO. 623

[HB 141]

AN ACT REVISING APPROPRIATION LANGUAGE FOR THE BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT; PROVIDING A REVISED STATUTORY APPROPRIATION; AMENDING SECTION 85-20-1504, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 85-20-1504, MCA, is amended to read:

"**85-20-1504. Blackfeet Tribe water rights compact mitigation account -- use.** (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact mitigation account. The department shall administer the account. ~~Up to $650,000 each fiscal year of interest and earnings on the account must be deposited in the account.~~ *All interest and other income earned on money in the account must be deposited in the account.*

(2) The Blackfeet Tribe water rights compact mitigation account may be used only for:

(a) expenditures for grants to or matching funds for federal or other grants to water right holders under state law for water from Birch Creek, Badger Creek, Cut Bank Creek, the Two Medicine River, and the portion of the Milk River within the exterior boundaries of the Blackfeet Indian reservation for projects approved by the department to enhance water availability or otherwise mitigate the economic and hydrologic impacts on water right holders under state law caused by the development of the Blackfeet Tribe's water rights under a water rights compact pursuant to 85-2-702 quantifying the water rights of the Blackfeet Tribe; and

(b) implementation of the water rights compact among the Blackfeet Tribe, the state, and the United States and any associated agreements as may be specified in the compact or agreements.

~~(3) The department may expend up to $650,000 each fiscal year of the interest and income on the escrow account provided for in subsection (4)(c) for the purposes described in subsection (2)(b). This money is statutorily appropriated, as provided in 17-7-502.~~

~~(4)~~*(3)* (a) At least $4.5 million of this account must be dedicated to mitigate impacts on water right holders under state law for use of water out of Birch Creek.

(b) The amount of $14 million in this account must be used to mitigate impacts of development of the tribal water right on water users as provided for in a February 13, 2009, amendment to an agreement between the Blackfeet Tribe of the Blackfeet Indian reservation and the state of Montana regarding Birch Creek water use entered into January 31, 2008.

(c) The amount of $10 million in this account must be held in escrow. The department shall negotiate the terms of an escrow agreement.

~~(5)~~*(4)* ~~Except as provided in subsection (3), funds~~ *Funds* from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

(5) Money in the Blackfeet Tribe water rights compact mitigation account is statutorily appropriated, as provided in 17-7-502, to the department of natural resources and conservation."

Section 2. Effective date. [This act] is effective July 1, 2023.

Approved May 19, 2023

CHAPTER NO. 624

[HB 163]

AN ACT EXTENDING TERMINATION OF THE MISSING INDIGENOUS PERSONS TASK FORCE AND THE GRANT PROGRAM THE TASK FORCE

ADMINISTERS; ADDING A REPRESENTATIVE FROM THE OFFICE OF PUBLIC INSTRUCTION TO THE TASK FORCE; AUTHORIZING THE TASK FORCE TO MAKE RECOMMENDATIONS TO FEDERAL, STATE, AND LOCAL AGENCIES; PROVIDING AN APPROPRIATION; AMENDING SECTION 44-2-411, MCA; AMENDING SECTION 8, CHAPTER 373, LAWS OF 2019, SECTION 3, CHAPTER 243, LAWS OF 2021, AND SECTION 2, CHAPTER 268, LAWS OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 44-2-411, MCA, is amended to read:

"**44-2-411. (Temporary) Missing indigenous persons task force -- membership -- duties -- reporting.** (1) There is a missing indigenous persons task force. The task force is allocated to the department of justice for staffing services and administrative purposes only.

(2) Task force members, including the presiding officer, must be appointed by the attorney general or a designee of the attorney general. The task force membership must include but is not limited to:

(a) an employee of the department of justice who has expertise in the subject of missing persons;

(b) a representative from each federally recognized Indian tribe in Montana;

(c) a member from the Montana highway patrol; ~~and~~

(d) a representative from the attorney general's office*; and*

(e) a representative from the office of public instruction.

(3) While respecting the government-to-government relationship between the state and each tribe, the primary duties of the task force are to:

(a) identify jurisdictional barriers between federal, state, local, and tribal law enforcement and community agencies;

(b) work to identify causes that contribute to missing and murdered indigenous persons and make recommendations to federally recognized tribes in the state to reduce cases of missing and murdered indigenous persons; ~~and~~

(c) work to identify strategies to improve interagency communication, cooperation, and collaboration to remove jurisdictional barriers and increase reporting and investigation of missing indigenous persons*; and*

(d) administer the looping in native communities network grant program provided for in 44-2-412.

(4) A vacancy on the task force must be filled in the manner of the original appointment.

(5) By July 1 prior to each regular legislative session, the task force shall, in accordance with 5-11-210, prepare a written report of findings and recommendations for submission to the state-tribal relations committee provided for in 5-5-229. The report must include the following information:

(a) the number of unique individuals reported to the missing and murdered indigenous persons database;

(b) the number of unique individuals recovered as a result of the missing and murdered indigenous persons database;

(c) the number of unique individuals recovered as a result of the looping in native communities network grant program;

(d) the number of unique individuals searched for and recovered as a result of missing persons response teams;

(e) the number of missing persons entries into the missing and murdered indigenous persons database by year;

(f) an analysis by year of the characteristics of missing indigenous persons, including but not limited to age, gender, child protective services involvement status, foster case status, duration of time missing, and estimated related cause;

(g) the number of actively missing indigenous persons by year;

(h) a description and the results of any noncompetitive grant awardee activities;

(i) a description of the activities and progress related to improving interagency communication, cooperation, and collaboration and removing interjurisdictional barriers; and

(j) any other information the task force members find relevant to the task force's mission.

(6) In addition to the recommendations to federally recognized tribes in the state required under subsection (3)(b), the task force may make recommendations to federal, state, and local agencies in carrying out the task force's duties. (Terminates June 30, ~~2023~~ *2033*--sec. 3, Ch. 243, L. 2021, sec. 2, Ch. 268, L.2021.)"

Section 2. Section 8, Chapter 373, Laws of 2019, is amended to read:

"**Section 8. Termination.** [This act] terminates June 30, ~~2021~~ *2033*."

Section 3. Section 3, Chapter 243, Laws of 2021, is amended to read:

"**Section 3.** Section 8, Chapter 373, Laws of 2019, is amended to read:

"**Section 8. Termination.** [This act] terminates June 30, ~~2021~~ ~~*2023*~~ *2033*.""

Section 4. Section 2, Chapter 268, Laws of 2021, is amended to read:

"**Section 2.** Section 8, Chapter 373, Laws of 2019, is amended to read:

"**Section 8. Termination.** ~~[This act] terminates~~ *(1) [Section 1] terminates June 30,* ~~*2023*~~ *2033.*

(2) [Sections 2 and 3] terminate June 30, ~~2021~~ *2033*.""

Section 5. Transfer of funds. By July 15, 2023, the state treasurer shall transfer $5,000 from the state general fund to the looping in native communities network state special revenue account established in 44-2-413.

Section 6. Appropriation. (1) There is appropriated $5,000 from the looping in native communities network state special revenue account established in 44-2-413 to the missing indigenous persons task force established in 44-2-411 for the biennium beginning July 1, 2023, for the purposes of providing matching funds to tribal agencies to implement the looping in native communities network grant program established in 44-2-412. Any funds that are unencumbered by June 30, 2025, must revert to the general fund.

(2) There is appropriated $205,162 from the state general fund to the department of justice for the biennium beginning July 1, 2023, for the purposes of filling 1.0 FTE to coordinate and manage the administration of the missing persons indigenous task force in 44-2-411 and perform duties related to other missing persons programs at the department.

(3) The legislature intends that the appropriations in subsections (1) and (2) be considered part of the ongoing base for the next legislative session.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

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

Approved May 19, 2023

CHAPTER NO. 625

[HB 185]

AN ACT PROVIDING APPROPRIATIONS TO THE FIRE SERVICES TRAINING SCHOOL AT THE MONTANA STATE UNIVERSITY EXTENSION SERVICE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriations. (1) There is appropriated $352,152 from the general fund to the Montana university system for each fiscal year in the biennium beginning July 1, 2023, to fund the fire services training school at the Montana state university extension service.

(2) There is appropriated $120,000 from the general fund to the Montana university system for the biennium beginning July 1, 2023, to fund the fire services training school at the Montana state university extension service. This is one-time-only funding.

(3) The appropriations in subsection (1) are intended to supplement base funding to the Montana state university extension service for the fire services training school.

(4) The legislature intends that the appropriations in subsection (1) be considered part of the ongoing base for subsequent legislative sessions.

(5) The purpose of the appropriations in this section is to increase two current part-time training positions to full-time positions, to increase the service life of two fire engines, and to provide other materials required for training purposes.

Section 2. Effective date. [This act] is effective July 1, 2023.

Approved May 19, 2023

CHAPTER NO. 626

[HB 217]

AN ACT INCREASING FEES FOR MIGRATORY GAME BIRD LICENSES; AMENDING SECTION 87-2-411, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-2-411, MCA, is amended to read:

"**87-2-411. Migratory game bird licenses -- fees -- disposition of proceeds.** (1) The fee for a resident to purchase the migratory game bird license is ~~$6.50~~ *$5.50*. The fee for a nonresident to purchase the migratory game bird license is ~~$50~~ *$150*.

(2) Money received from the sale of migratory game bird licenses must be deposited in an account in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana."

Section 2. Effective date. [This act] is effective March 1, 2024.

Approved May 19, 2023

CHAPTER NO. 627

[HB 397]

AN ACT REVISING THE MONTANA DRIVER PRIVACY PROTECTION ACT; ALLOWING THE DEPARTMENT OF JUSTICE TO SHARE SOCIAL SECURITY NUMBERS WITH THE DEPARTMENT OF REVENUE SOLELY FOR INCOME TAX COMPLIANCE PURPOSES; EXEMPTING THE DEPARTMENT OF REVENUE FROM THE FEES ASSOCIATED WITH REQUESTING SOCIAL SECURITY NUMBERS; AMENDING SECTIONS 61-11-508 AND 61-11-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-11-508, MCA, is amended to read:

"**61-11-508. Permitted disclosure of personal information -- specific uses.** (1) ~~Upon~~ *On* application, proof of the identity of the person requesting a record, and payment of fees required in 61-11-510, the department may disclose personal information, including highly restricted personal information, from a motor vehicle record to:

(a) the person who is the subject of the motor vehicle record; or

(b) a person who represents that the use of the information will be strictly limited to one or more of the following:

(i) a federal, state, or local government agency, including a court or a law enforcement agency, and any individual acting on behalf of the agency in carrying out its functions, including representatives of the news media for a legitimate law enforcement purpose, as determined by the department; or

(ii) a person, organization, or entity, ~~upon~~ *on* the express consent of the person to whom the information pertains.

(2) The department shall not disclose a social security number unless:

(a) *it is disclosed* for the purposes of subtitle VI of Title 49 of the U.S.C.;

(b) *it is disclosed* to the department of public health and human services for use in administering Title IV-D of the Social Security Act; ~~or~~

(c) the release of the social security number is specifically authorized by law*; or*

(d) it is disclosed to the department of revenue for use in administering and enforcing Montana's income tax laws. The department of revenue shall treat social security numbers received pursuant to this subsection (2)(d) as confidential pursuant to 15-30-2618."

Section 2. Section 61-11-510, MCA, is amended to read:

"**61-11-510. Prerequisites to disclosure.** (1) Prior to the disclosure of personal information or highly restricted personal information, as provided in 61-11-507, 61-11-508, or 61-11-509, the department shall require the requester to complete and submit an application, in a form prescribed by the department, identifying the requester and specifying the statutorily recognized uses for which the personal information or highly restricted personal information is being sought.

(2) The department shall require the requester to provide identification acceptable to the department.

(3) (a) The department shall collect the appropriate fees paid by the requester and shall determine the amount of the fees in accordance with 61-3-101, 61-11-105, and this subsection (3), and as appropriate, in accordance with the terms of a contract between the department and the requester.

(b) The department shall ensure that fees established by policy or contract:

(i) recover the department's cost and expenses as provided in 2-6-1006 and 61-3-101;

(ii) include an additional amount necessary to compensate the department for costs associated with developing and maintaining the database from which information is requested; and

(iii) incorporate, when applicable, the convenience fee established under 2-17-1103.

(c) Except as provided in 61-11-105(5)(b) and subsection (3)(d) of this section, the department shall charge a fee to any person, including a representative of a federal, state, or local government entity or member of the news media who requests information under this section.

(d) The department may not charge a fee for information requested by the governor's office of budget and program planning, the Montana tax appeal board, *the department of revenue,* any legislative branch agency or committee, or any criminal justice agency, as defined in 44-5-103."

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

Approved May 19, 2023

CHAPTER NO. 628

[HB 449]

AN ACT PROVIDING FOR PEDIATRIC COMPLEX CARE ASSISTANT SERVICES UNDER THE MEDICAID PROGRAM; ESTABLISHING LICENSURE REQUIREMENTS FOR CARE ASSISTANTS; ALLOWING MEDICAID COVERAGE OF CARE ASSISTANT SERVICES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-1-401, 53-6-101, AND 53-6-402, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Pediatric complex care assistant -- qualifications -- scope of practice. (1) An individual may not practice as a pediatric complex care assistant unless licensed under Title 37, chapter 1, and this chapter.

(2) An applicant for licensure must have:

(a) completed a training program approved by the department and received a valid certificate from the training program; and

(b) passed a hands-on examination approved by the department that demonstrates the applicant's competence.

(3) The training program approved by the department must include medication administration, airway clearance therapies, tracheostomy care, and enteral care and therapy for an individual under 21 years of age.

(4) A pediatric complex care assistant may provide services only to an individual under 21 years of age for whom the care assistant is a parent, guardian, other family member, or kinship care or foster care provider. The services must be:

(a) ordered by a physician and consistent with the individual's plan of care; and

(b) limited to:

(i) duties considered by the department to be equivalent to those of a certified nursing assistant;

(ii) medication administration;

(iii) tracheostomy care and enteral care and therapy;

(iv) airway clearance therapies; and

(iv) other services as allowed by the department by rule.

Section 2. Rulemaking. The department shall adopt rules to carry out the purposes of [section 1], including but not limited to:

(1) training and testing requirements for pediatric complex care assistants;

(2) application fees; and

(3) pediatric complex care assistant scope of practice.

Section 3. Section 37-1-401, MCA, is amended to read:

"**37-1-401. Uniform regulation for licensing programs without boards -- definitions.** As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

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

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) *Title 37, chapter 2, [sections 1 and 2];*

(b) Title 37, chapter 35, 72, or 73; or

~~(b)~~*(c)* Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) *Title 37, chapter 2, [sections 1 and 2];*

(b) Title 37, chapter 35, 49, 72, or 73; or

~~(b)~~*(c)* Title 50, chapter 39, 74, or 76."

Section 4. Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq. The department shall administer the Montana medicaid program.

(2) The department and the legislature shall consider the following funding principles when considering changes in medicaid policy that either increase or reduce services:

(a) protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;

(b) giving preference to the elimination or restoration of an entire medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

(c) giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.

(3) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age, in accordance with federal regulations and subsection (10)(b);

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department;

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2);

(m) routine patient costs for qualified individuals enrolled in an approved clinical trial for cancer as provided in 33-22-153;

(n) for children 18 years of age and younger, habilitative services as defined in 53-4-1103; and

(o) services provided by a person certified in accordance with 37-2-318 to provide services in accordance with the Indian Health Care Improvement Act, 25 U.S.C. 1601, et seq.

(4) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services*, including services provided by pediatric complex care assistants licensed pursuant to [section 1]*;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 10;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services, as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) services of psychologists licensed under Title 37, chapter 17;

(p) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201;

(q) services of behavioral health peer support specialists certified under Title 37, chapter 38, provided to adults 18 years of age and older with a diagnosis of a mental disorder, as defined in 53-21-102; and

(r) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(5) Services for persons qualifying for medicaid under the medically needy category of assistance, as described in 53-6-131, may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (3) and (4) to persons qualifying for medicaid under the medically needy category of assistance.

(6) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving cash assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child and for all adult recipients of medical assistance only who are covered under a group related to a program providing cash assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsection (3) but may include those optional services listed in subsections (4)(a) through (4)(r) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, whether approval has been received, as provided in 53-1-612, and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(7) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(8) (a) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(b) The department shall strive to close gaps in services provided to individuals suffering from mental illness and co-occurring disorders by doing the following:

(i) simplifying administrative rules, payment methods, and contracting processes for providing services to individuals of different ages, diagnoses, and treatments. Any adjustments to payments must be cost-neutral for the biennium beginning July 1, 2017.

(ii) publishing a report on an annual basis that describes the process that a mental health center or chemical dependency facility, as those terms are defined in 50-5-101, must utilize in order to receive payment from Montana medicaid for services provided to individuals of different ages, diagnoses, and treatments.

(9) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(10) (a) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(b) The department shall, with reasonable promptness, provide access to all medically necessary services prescribed under the early and periodic screening, diagnosis, and treatment benefit, including access to prescription drugs and durable medical equipment for which the department has not negotiated a rebate.

(11) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(12) (a) Prior to enacting changes to provider rates, medicaid waivers, or the medicaid state plan, the department ~~of public health and human services~~ shall report this information to the following committees:

(i) the children, families, health, and human services interim committee;

(ii) the legislative finance committee; and

(iii) the health and human services budget committee.

(b) In its report to the committees, the department shall provide an explanation for the proposed changes and an estimated budget impact to the department over the next 4 fiscal years.

(13) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program after taking into consideration the funding principles set forth in subsection (2). (Subsection (3)(o) terminates September 30, 2023--sec. 7, Ch. 412, L. 2019.)"

Section 5. 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) services provided by a licensed pediatric complex care assistant as authorized under [sections 1 and 2];

~~(d)~~*(e)* personal care services;

~~(e)~~*(f)* adult day health services;

~~(f)~~*(g)* habilitation services;

~~(g)~~*(h)* respite care services; and

~~(h)~~*(i)* 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, including rules for substantive changes to approved waiver provisions as required under 53-6-413. 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.

(c) Reimbursement rates for pediatric complex care assistants licensed pursuant to [section 1] must reflect the special skills needed to meet the health care needs of the individuals receiving the services and must be comparable to the reimbursement rate for home health aide services.

(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.

(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.

(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 6. Codification instruction. [Sections 1 and 2] are intended to be codified as a new part in Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 and 2].

Section 7. Coordination instruction. If both House Bill No. 152 and [this act] are passed and approved, and House Bill No. 152 contains one or more sections giving the department of labor and industry authority to adopt rules for professional and occupational licensing programs, then [section 2 of this act] is void.

Section 8. Coordination instruction. If both House Bill No. 152 and [this act] are passed and approved and House Bill No. 152 repeals 37-1-401, then [section 3 of this act], amending 37-1-401, is void.

Section 9. Effective date. [This act] is effective July 1, 2023.

Section 10. Termination. [This act] terminates June 30, 2031.

Approved May 19, 2023

CHAPTER NO. 629

[HB 482]

AN ACT ESTABLISHING THE MONTANA FOSTER YOUTH HIGHER EDUCATION ASSISTANCE PROGRAM; AND PROVIDING A TERMINATION DATE.

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

Section 1. Montana foster youth higher education assistance program -- administration -- eligible institutions. (1) (a) Contingent on appropriation from the legislature, there is a Montana foster youth higher education assistance program administered by the board of regents through the commissioner of higher education for the purpose of helping youth who have aged out of the foster care system meet their educational, vocational, and professional goals without accruing debt.

(b) The Montana foster youth higher education assistance program shall allow and encourage each participating institution to develop a unique program to serve its eligible students pursuant to [section 2].

(c) The board of regents shall adopt policies for the administration of the program consistent with [sections 1 and 2]. The policies must include a provision that if funds appropriated for the Montana foster youth higher education assistance program are insufficient in any year, then financial assistance to students under [section 2(1)(d)] is awarded on a first-come, first-served basis.

(2) An educational or training institution is eligible for a program grant if it is a community or tribal college located in the state of Montana, a 2-year

or 4-year institution of the Montana university system, or a publicly funded vocational training program.

(3) The legislature intends that institutions receiving grants pursuant to subsection (2) may reapply to the program for additional grants.

(4) In accordance with 5-11-210, the commissioner shall report annually to the education interim committee and the children, families, health, and human services interim committee on the status and impacts of the grants described in this section.

Section 2. Montana foster youth higher education assistance program -- program requirements -- student participant eligibility. (1) Institutions awarded a grant shall develop a program that:

(a) serves students who are eligible participants pursuant to subsection (2);

(b) provides on-campus, year-round room and board, including meal plans, to participants from the time they age out of foster care;

(c) provides support services to each participant, including help with admissions and enrollment, assistance completing financial aid paperwork and scholarship applications, life skills training, academic tutoring, job search and career assistance, and a community family or mentor for the purpose of creating a family-like and nurturing connection in the community;

(d) provides last dollar scholarship awards, not to exceed the cost of attendance, based on each term for which a student is eligible. The scholarship awards must be 50% funded by the Montana foster youth higher education assistance program and the remaining 50% funded by private academic unit funds.

(2) To be considered an eligible participant, a student must:

(a) be eligible for the federal John H. Chafee foster care for successful transition to adulthood program;

(b) be enrolled full time and taking courses that lead to:

(i) an associate or bachelor's degree offered by the institution; or

(ii) a vocational or entry-level professional credential or certification offered by the institution;

(c) have been a resident of Montana for at least 12 months prior to applying to the program;

(d) have graduated from high school or received a secondary education equivalency certificate; and

(e) have completed and submitted the free application for federal student aid for the current academic year and accepted all federal and state aid grants available.

(3) A participant shall:

(a) make satisfactory progress toward a degree or vocational or entry-level professional credential or certification;

(b) maintain a cumulative grade point average of at least 2.0;

(c) pay a nominal fee toward the cost of attendance, as determined by the institution;

(d) work a minimum of 10 hours per week from the second semester onward; and

(e) accept support services, including tutoring and life skills classes, offered by the institution.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 26, part 6, and the provisions of Title 20, chapter 26, part 6, apply to [sections 1 and 2].

Section 4. Termination. [Sections 1 and 2] terminate June 30, 2031. It is the intent of the legislature to review the program before it terminates.

Approved May 19, 2023

CHAPTER NO. 630

[HB 487]

AN ACT PROHIBITING SEED CLEANING OR CONDITIONING WITHOUT DEPARTMENT DECLARATION; AND AMENDING SECTION 80-5-134, MCA.

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

Section 1. Section 80-5-134, MCA, is amended to read:

"**80-5-134. Prohibitions.** (1) A person may not sell or transport for use in planting in this state any seed that:

(a) contains prohibited noxious weed seeds;

(b) contains restricted weed seeds in excess of the maximum numbers per pound allowed under rules adopted by the department;

(c) contains in excess of 2% or more of weed seed;

(d) is offered or exposed for sale more than 12 calendar months from the last day of the month in which the germination test was completed. This 12-month limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than 8-point type to indicate that:

(i) the container is hermetically sealed;

(ii) the seed has been preconditioned as to moisture content; and

(iii) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis and for a period not to exceed 36 months for seeds offered for sale at retail.

(e) is labeled, advertised, or otherwise represented as being certified seed of any class unless:

(i) it has been determined by a seed certifying agency that the seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and

(ii) the seed bears an official label issued for that seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(f) is a variety for which a United States certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act, 7 U.S.C. 2321, et seq., without the authority of the owner of the variety or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety name when used in a mixture;

(g) is not labeled in accordance with the provisions of this chapter and appurtenant rules or that has false or misleading labeling;

(h) has been falsely or misleadingly advertised.

(2) It is unlawful for a person within this state to:

(a) detach, alter, deface, or destroy any label provided for in this chapter or by rules promulgated pursuant to this chapter or to alter or substitute seed in a manner that may defeat the purposes of this chapter;

(b) disseminate any false or misleading advertisement concerning seed subject to the provisions of this chapter in any manner or by any means;

(c) hinder or obstruct, in any way, any authorized person in the performance of duties authorized under this chapter;

(d) fail or refuse to obtain a license when required pursuant to 80-5-130;

(e) fail to comply with a stop sale order or to move or otherwise handle or dispose of any lot of seed held under a stop sale order except with permission of the department and for the purpose specified in the stop sale order;

(f) fail to comply with any provisions of this part, including rules promulgated under this part;

(g) use the word "trace" as a substitute for any required statement; ~~or~~

(h) use the word "type" in any labeling in connection with the name of any agricultural seed variety*; or*

(i) provide seed cleaning and conditioning services without obtaining a properly completed genuine grower declaration form as specified by the department."

Approved May 19, 2023

CHAPTER NO. 631

[HB 576]

AN ACT REVISING LAWS RELATED TO WATER AND COAL MINING; REVISING THE DEFINITION OF "MATERIAL DAMAGE" TO INCLUDE THE EFFECT OF COAL MINING ON THE HYDROLOGIC BALANCE AND OTHER CIRCUMSTANCES; PROVIDING RULEMAKING AUTHORITY; DIRECTING AN AMENDMENT TO 17.24.301 TO REMOVE CERTAIN DEFINITIONS; AMENDING SECTIONS 82-4-203 AND 82-4-222, MCA; 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. Department to amend rule. The department of environmental quality shall amend ARM 17.24.301 to remove the two subsections defining "material damage" and the subsection defining "materially damage the quantity or quality of water".

Section 2. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) "Affected drainage basin" means an area of land where surface water and ground water quality and quantity are affected by mining activities and where they drain to a common point.

(4) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion

and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(5) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

(6) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

(7) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

(8) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

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

(10) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

(11) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(12) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(13) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(14) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(15) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

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

(17) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(18) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

(19) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

(20) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(21) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(22) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(23) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(24) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(25) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

(26) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or

other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(27) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(28) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

(b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated by the board of oil and gas conservation pursuant to Title 82, chapter 11.

(29) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(30) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

(31) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(32) "Material damage" means~~,~~*:*

(a) with respect to protection of the hydrologic balance~~,~~*:*

(i) significant long-term or permanent ~~degradation or reduction~~ *adverse change* by coal mining and reclamation operations ~~of~~ *to* the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected~~, water quality standards are violated,~~ or water rights are impacted*; and*~~. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.~~

(ii) long-term or permanent exceedance of a water quality standard outside a permit area if caused by coal mining or reclamation operations, except that in water bodies for which the water quality standard is more stringent than baseline conditions as determined by the department's assessment of the cumulative hydrologic impact findings conducted pursuant to 82-4-222. For these water bodies, a significant, long-term adverse change to the baseline condition of water quality outside of a permit area is material damage if coal mining or reclamation operations cause adverse effects to land use, beneficial uses of water, or water rights.

(b) with respect to an alluvial valley floor, degradation or reduction by coal mining and reclamation operations of the water quality or quantity supplied to

the alluvial valley floor that significantly decreases the capability of the alluvial valley floor to support agricultural activities; and

(c) with respect to subsidence caused by an underground coal mining operation:

(i) any functional impairment of surface lands, features, or structures;

(ii) any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(iii) any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.

(33) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(34) "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(35) "Mineral" means coal and uranium.

(36) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(37) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

(38) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(39) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(40) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

(41) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(42) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

(43) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

(44) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

(45) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

(46) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

(47) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(48) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(49) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(50) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

(51) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

(52) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(53) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

(54) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(55) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

(56) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

(57) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(58) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

(59) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 3. Section 82-4-222, MCA, is amended to read:

"**82-4-222. Permit application -- application revisions.** (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and provide:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact. The information required in this subsection (1)(g) must be updated and approved by the department in the event of a change in the parties specified in this subsection (1)(g)(i) as a result of bankruptcy or reorganization.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(iii) evidence, determined by department rule and in accordance with 82-4-231, that the parties or persons specified in subsection (1)(g)(i) will provide bonding or other financial assurance necessary to meet their financial [obligations for employee pensions and] obligations to reclaim property in accordance with the requirements of 82-4-231 through 82-4-234. [An operator may not pass the costs associated with the financial obligations for employee pensions established in this subsection (1)(g)(iii) on to purchasers served by the strip or underground mine if the purchasers are dependent on the mine to generate electricity that is consumed by electric customers.]

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or the applicant's agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name of a newspaper of general circulation in the locality of the proposed activity in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of the applicant's application for a strip-mining or

underground-mining permit and a detailed description of the area of land to be affected if a permit is granted. If that newspaper is not published in Montana, the applicant shall also provide the name of a newspaper of general circulation in the county in which the proposed operation is located that is published in Montana in which the applicant will publish an announcement and description in accordance with this subsection.

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime and quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. ~~However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application.~~ The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area.

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

(q) a coal conservation plan;

(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by maps meeting the requirements of subsections (2)(a) through (2)(n). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant species encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree species and the approximate number of each species occurring per acre on the area to be affected, and the locations generally of the various species of plants;

(m) be certified by a professional engineer or professional land surveyor licensed as provided by Title 37, chapter 67; and

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation

plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on January 1, 2004, in order to incorporate the provisions of this part.

(7) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

(8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur or at another accessible public office or facility approved by the department. (Bracketed language in subsection (1)(g)(iii) terminates on occurrence of contingency--sec. 4, Ch. 484, L. 2019.)"

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. Contingent voidness. (1) If the United States secretary of the interior disapproves any provision of [this act] pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) The department of environmental quality shall notify the code commissioner of a disapproval under subsection (1) within 15 days of the effective date of the disapproval.

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

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act].

Approved May 19, 2023

CHAPTER NO. 632

[HB 641]

AN ACT ALLOWING ENVIRONMENTAL REVIEWS OF IMPACTS BEYOND MONTANA'S BORDERS IF THE FEDERAL CLEAN AIR ACT REGULATES CARBON DIOXIDE AS A POLLUTANT; AMENDING SECTION 75-1-201,

MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 75-1-201, MCA, is amended to read:

"**75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsections (2) and (3), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking for a state-sponsored project that may have an impact on the Montana human environment by projects in Montana; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(II) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(III);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking for state-sponsored projects, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment in Montana are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment in Montana a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse effects on Montana's environment that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the Montana human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a specific course of action.

(vi) recognize the potential long-range character of environmental impacts in Montana and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize cooperation in anticipating and preventing a decline in the quality of Montana's environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of Montana's environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the legislature and the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in Montana and with any Montana local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency in Montana with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature.

(b) An environmental review conducted pursuant to subsection (1) may include a review of actual or potential impacts beyond Montana's borders if ~~it is conducted by~~:

(i) *it is conducted by* the department of fish, wildlife, and parks for the management of wildlife and fish;

(ii) *it is conducted by* an agency reviewing an application for a project that is not a state-sponsored project to the extent that the review is required by law, rule, or regulation; ~~or~~

(iii) *it is conducted by* a state agency and a federal agency to the extent the review is required by the federal agency*; or*

(iv) the United States congress amends the federal Clean Air Act to include carbon dioxide emissions as a regulated pollutant.

(3) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(4) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (4) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(5) (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection (5)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection (5)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue, and except as provided in subsection (6)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.

(ii) Except as provided in subsection (6)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that

the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the agency's decision.

(b) (i) When a party challenging the decision or the adequacy of the environmental review or decision presents information not in the record certified by the agency, the challenging party shall certify under oath in an affidavit that the information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

(ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to the agency for the agency's consideration and an opportunity to modify its decision or environmental review before the court considers the evidence as a part of the administrative record under review.

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

(c) (i) The remedies provided in this section for successful challenges to a decision of the agency or the adequacy of the statement are exclusive.

(ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent injunction, or other equitable relief may not enjoin the issuance or effectiveness of a license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction, a permanent injunction, or other equitable relief, that the:

(A) party requesting the relief will suffer irreparable harm in the absence of the relief;

(B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in the public interest, a court:

(I) may not consider the legal nature or character of any party; and

(II) shall consider the implications of the relief on the local and state economy and make written findings with respect to both.

(C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief to which the applicant has been determined to be entitled.

(d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the case. If the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the court that

states the party's income, assets, and liabilities in order to facilitate the court's consideration of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined.

(e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

(8) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(9) A project sponsor may request a review of the significance determination or recommendation made under subsection (8) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

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

Section 3. Applicability. [This act] applies to environmental impact statements in process on [the effective date of this act] and statements started after [the effective date of this act].

Approved May 19, 2023

CHAPTER NO. 633

[HB 742]

AN ACT RESTRICTING THE USE OF RESTRAINTS ON A YOUTH IN YOUTH COURT PROCEEDINGS; AND DEFINING RESTRAINTS.

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

Section 1. Use of restraints on youth -- definition. (1) (a) A youth under 10 years of age may not be restrained in a proceeding in youth court under any circumstances.

(b) (i) Except as provided in subsections (2) and (3), restraints may not be used on a youth 10 years of age or older during a proceeding in youth court and must be removed prior to the youth's appearance before the court.

(ii) A youth 10 years of age or older may not be restrained to a wall, the floor, another youth, or to furniture during a court proceeding.

(2) (a) The court may authorize the use of restraints on a youth 10 years of age or older during a court proceeding if the court holds a hearing and makes a finding by clear and convincing evidence that the use of restraints is the least restrictive means available and is necessary:

(i) to prevent physical harm to the youth or another person in the courtroom; or

(ii) because of a well-founded belief that the youth is a substantial flight risk.

(b) If an officer of the court or the county attorney recommends the use of restraints on a youth, the officer or attorney shall provide written notice to the court and the youth's attorney of the specific circumstances that support the recommendation. The notice must be included in the record.

(c) The court shall allow the youth's attorney and the officer of the court or county attorney recommending the use of restraints to be heard before the court makes a ruling on the use of restraints.

(3) (a) If the court orders the use of restraints on a youth 10 years of age or older, the court shall make written findings of fact in support of the order, including specific findings supporting the choice of restraints ordered by the court pursuant to subsection (3)(b).

(b) Restraints ordered by the court for use on a youth must properly account for the care, protection, and positive mental and physical development of the youth and must permit the youth to handle documents in a manner that allows the youth to fully engage in court proceedings.

(4) For the purposes of this section, "restraints" means handcuffs, leg shackles, leg irons, belly belts, belly chains, or other restraint devices used to restrict free movement of limbs or appendages, including restraints made of cloth and leather.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 5, part 14, and the provisions of Title 41, chapter 5, part 14, apply to [section 1].

Approved May 19, 2023

CHAPTER NO. 634

[HB 852]

AN ACT REVISING THE HONOR AND REMEMBER ACT; INCLUDING THE SPACE FORCE AS A COMPONENT OF THE UNITED STATES ARMED FORCES; PROVIDING FOR THE CREATION OF A COMMEMORATIVE MEMORIAL COIN FOR FAMILY MEMBERS OF ELIGIBLE VETERANS; PROVIDING FOR DISTRIBUTION OF MEMORIAL COINS TO FAMILY MEMBERS; PROVIDING A DEFINITION; AND AMENDING SECTIONS 10-2-802, 10-2-803, 10-2-804, 10-2-805, AND 10-2-807, MCA.

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

Section 1. Section 10-2-802, MCA, is amended to read:

"**10-2-802. Definitions.** As used in this part, the following definitions apply:

(1) "Eligible service member" means a service member who meets the criteria established in 10-2-804(2).

(2) "Eligible veteran" means a veteran of the United States armed forces who was a citizen of Montana at any time during the veteran's military service and is authorized by the U.S. department of veterans affairs for military honors.

~~(2)~~*(3)* "Family member" means the spouse of an eligible service member or a person who is a parent, child, brother, sister, or grandparent of an eligible service member by lineage, adoption, legal guardianship, or marriage.

~~(3)~~*(4)* "United States armed forces" means the active and reserve components of the United States army, marine corps, navy, air force, ~~and coast guard~~ *space force, coast guard, and national guard*."

Section 2. Section 10-2-803, MCA, is amended to read:

"**10-2-803. Honor and remember medallion -- *commemorative memorial coin.*** *(1)* There is an honor and remember medallion for family members of eligible service members.

(2) There is a commemorative memorial coin for family members of eligible veterans.

(3) To the extent that funding is available for the purposes of this part, the department shall administer the provisions of this part and provide for the design and production of the medallion *and coin* and for ~~its~~ *their* distribution, along with the joint resolution under 10-2-806, to eligible family members."

Section 3. Section 10-2-804, MCA, is amended to read:

"**10-2-804. Family member application -- eligibility determination.** (1) A family member of an eligible service member may apply for the honor and remember medallion *and a family member of an eligible veteran may apply for the commemorative memorial coin* using a form and in a manner prescribed by the department, including providing the documentation requested by the department.

(2) (a) An eligible service member is a member of the United States armed forces who:

(i) was killed in action or classified by the United States as missing in action on or after September 8, 1939, while:

(A) engaged in an action against an enemy of the United States;

(B) serving with friendly foreign forces engaged in an armed conflict in which the United States was not a belligerent party against an opposing armed force; or

(C) engaged in military operations involving conflict with an opposing foreign force;

(ii) was serving on federal military active duty orders; and

(iii) was a legal resident of Montana at the time *and is authorized by the U.S. department of veterans affairs for military honors.*

(b) An eligible veteran is a member of the United States armed forces who:

(i) served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable; and

(ii) was a legal resident of Montana at the time and is authorized by the U.S. department of veterans affairs for military honors.

~~(b)~~*(c)* The department shall determine how the criteria described in subsection (2)(a) is to be defined and documented for the purposes of this part.

(3) ~~Upon~~ *On* receipt of an application, the department shall determine whether the family member is eligible to receive the medallion *or coin* and notify the family member of the determination."

Section 4. Section 10-2-805, MCA, is amended to read:

"**10-2-805. First and subsequent medallions -- cost.** (1) The first medallion and the first copy of the joint resolution under 10-2-806 provided to a family member of an eligible service member *or the first commemorative memorial coin provided to a family member of an eligible veteran* must be provided without cost to the family member.

(2) After the first medallion *or coin* has been provided to a family member, additional family members of the eligible service member *or the eligible veteran* may, in a manner prescribed by the department, purchase additional medallions and copies of the joint resolution *or coins* for an amount that may

not exceed the actual cost to the department for providing the additional medallions and joint resolutions *or coins*.

(3) A family member may receive only one medallion and resolution *or coin*.

(4) Payments received pursuant to this section must be deposited to the account established in 10-2-807."

Section 5. Section 10-2-807, MCA, is amended to read:

"**10-2-807. ~~Account~~ *Accounts* established -- statutory appropriation.** (1) *(a)* There is an account in the state special revenue fund provided for in 17-2-102 to the credit of the department *for the honor and remember medallion program*.

~~(2)~~*(b)* Gifts, grants, and donations provided for the purposes of this part and payments received under 10-2-805 must be deposited to this account.

~~(3)~~*(c)* Money in the account is statutorily appropriated, as provided in 17-7-502, to the department and may be used only for the purposes of this part.

(2) (a) There is an account in the state special revenue fund provided for in 17-2-102 to the credit of the department for the commemorative memorial coin program.

(b) Gifts, grants, and donations provided for the purposes of this part and payments received under 10-2-805 must be deposited to this account.

(c) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department and may be used only for the purposes of this part."

Approved May 19, 2023

CHAPTER NO. 635

[HB 867]

AN ACT REVISING AGENCY LIQUOR STORE LAWS; REVISING LAWS RELATED TO WHEN A STORE MAY REMAIN OPEN; ALLOWING AGENCY LIQUOR STORES TO REMAIN OPEN ON SUNDAYS, MONDAYS, AND LEGAL HOLIDAYS; PROVIDING THAT THE OPERATING HOURS ARE SUBJECT TO RESTRICTIONS; ALLOWING THE STATE TO RECOUP COSTS IN PHYSICALLY RECOVERING EXISTING INVENTORY FOR WHICH IT HAS A LIEN FOR LATE PAYMENTS BY THE AGENCY LIQUOR STORE; ALLOWING CREDIT PURCHASES BY LICENSEES FROM AGENCY LIQUOR STORES IF PAYMENT IS MADE WITHIN A CERTAIN AMOUNT OF TIME; AMENDING SECTIONS 16-2-104, 16-2-110, AND 16-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-2-104, MCA, is amended to read:

"**16-2-104. Hours.** ~~(1)~~ Agency liquor stores may remain open during the period between 8 a.m. and 2 a.m. ~~The stores must be closed for the transaction of business on legal holidays and between the close of normal business Saturday afternoon up to the opening of normal business Tuesday morning.~~ *Subject to local ordinances or department requirements relating to operating hours, a store may be open or closed at the store's discretion.*

~~(2) (a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that agency liquor stores located within the immediate market area may be open on Mondays. The petition must be on a form prescribed by the department. The department shall verify the validity of the signatures on the petition. If the department~~

~~determines that the petition contains sufficient valid signatures, all agency liquor stores within the designated market area must be allowed to transact business on Mondays that are not legal holidays. To determine the number of signatures needed, the department shall round up to the nearest whole number any fractional number of all-beverages licensees.~~

~~(b) For the purposes of subsection (2)(a), immediate market area means:~~

~~(i) the city limits for stores located in incorporated cities or towns; and~~

~~(ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities or towns or in a consolidated local government.~~"

Section 2. Seven-day credit limitation. (1) A sale or delivery of liquor or table wine may not be made to a retail licensee from an agency liquor store unless cash is paid within 7 days after the delivery of the liquor or table wine.

(2) An agency liquor store may not extend more than 7 days' credit for the sold or delivered liquor or table wine to a retail licensee, and a retail licensee may not accept or receive delivery of the liquor or table wine without agreement to pay in cash for the liquor or table wine within 7 days after the delivery.

(3) A correctly dated check that is honored on presentation is considered cash for the purposes of this section.

(4) Any extension or acceptance of credit in violation of this section is considered rendering or receiving of financial assistance. The licenses of any retail licensees that violate this section must be suspended or revoked, and the franchise agreement of any agency liquor store involved in a violation of this section must be terminated, as determined by the department in its discretion.

Section 3. Section 16-2-110, MCA, is amended to read:

"**16-2-110. State lien on liquor in agency liquor stores.** The state has a first lien with an absolute first priority to secure any outstanding amounts due the state for liquor purchased on any inventory, including any after-acquired inventory in the possession of an agent or on the premises of an agency liquor store, to secure payment for the existing inventory. The state has the right to physically recover any inventory from an agency liquor store *and impose fees to recoup the cost of the recovery* for any failure to timely make payments."

Section 4. Section 16-2-203, MCA, is amended to read:

"**16-2-203. Sales to licensees.** Agency liquor stores may sell to licensees licensed under this code all kinds of liquor and table wine at the posted price. All sales must be made*:*

(1) on a cash basis*; or*

(2) as provided in [section 2]."

Section 5. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 16, chapter 2, and the provisions of Title 16, chapter 2, apply to [section 2].

Section 6. Coordination instruction. If both House Bill No. 69 and [this act] are passed and approved and both amend 16-2-203, then [section 4 of this act], amending 16-2-203, is void and 16-2-203 must be amended as follows:

"16-2-203. Sales to licensees. Agency liquor stores may sell to licensees licensed under this code all kinds of liquor and table wine at the posted price. All sales must be ~~made on a cash basis~~ *paid for at the time of sale or made as provided in [section 2]*."

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 19, 2023

CHAPTER NO. 636

[HB 881]

AN ACT GENERALLY REVISING LAWS RELATED TO THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM; REMOVING LOCAL AND TRIBAL GOVERNMENTS AS ELIGIBLE APPLICANTS; ALLOWING BUSINESSES TO APPLY DIRECTLY TO THE PROGRAM; REMOVING REQUIREMENTS RELATING TO HIGH-POVERTY COUNTIES; REMOVING REQUIREMENTS ASSOCIATED WITH JOB CREATION; REMOVING ALLOCATIONS FOR DISTRIBUTIONS TO LOCAL OR TRIBAL GOVERNMENTS AND CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS; ALLOWING AWARDS FOR WORKFORCE ACTIVITIES; REVISING A STATUTORY APPROPRIATION ALLOCATION; TRANSFERRING FUNDS FROM THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT TO THE ECONOMIC DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT; TRANSFERRING FUNDS FROM THE PRIMARY SECTOR BUSINESS TRAINING ACCOUNT TO THE ECONOMIC DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT; TRANSFERRING DEFEDERALIZED ECONOMIC DEVELOPMENT FUNDS FROM THE DEPARTMENT OF COMMERCE TO THE ECONOMIC DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT; EXTENDING THE SUNSET DATE ON THE COAL SEVERANCE TAX TRUST FUND FOR THE BIG SKY ECONOMIC DEVELOPMENT PROGRAM; REVISING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-5-703, 17-6-407, 17-6-409, 39-11-205, 90-1-201, 90-1-202, 90-1-203, 90-1-204, AND 90-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17-5-703, MCA, is amended to read:

"**17-5-703. (Temporary) Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a Montana coal endowment fund;

(c) a Montana coal endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund;

(f) a big sky economic development fund; and

(g) a school facilities fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (4) and (5).

(3) (a) The state treasurer shall monthly transfer from the Montana coal endowment fund to the Montana coal endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with

90-6-710. Earnings not transferred to the Montana coal endowment special revenue account must be retained in the Montana coal endowment fund.

(b) The state treasurer shall monthly transfer from the Montana coal endowment regional water system fund to the Montana coal endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the Montana coal endowment regional water system special revenue account must be retained in the Montana coal endowment regional water system fund.

(4) (a) Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in 20-9-380(1) 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is $200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance tax permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the school facilities fund to the account established in 20-9-525 the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in 20-9-525 must be retained in the school facilities fund.

(5) (a) From July 1, 2005, through June 30, ~~2025~~ *2035*, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2031--secs. 1 through 3, Ch. 305, L. 2015.)

17-5-703. (Effective July 1, 2031) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a Montana coal endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund;

(e) a big sky economic development fund; and

(f) a school facilities fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (4) and (5).

(3) The state treasurer shall monthly transfer from the Montana coal endowment fund to the Montana coal endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the Montana coal endowment special revenue account must be retained in the Montana coal endowment fund.

(4) (a) Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in 20-9-380(1) 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is $200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance tax permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the school facilities fund to the account established in 20-9-525 the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in 20-9-525 must be retained in the school facilities fund.

(5) (a) From July 1, 2005, through June 30, ~~2025~~ *2035*, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 2. Section 17-6-407, MCA, is amended to read:

"**17-6-407. Microbusiness development loan account ~~and finance program administrative account~~ -- criteria -- limitations.** (1) (a) There is in the state special revenue fund a microbusiness development loan account into which funds allocated for that purpose ~~and money received in repayment of the principal of development loans~~ *and money received in repayment of the principal of development loans* must be deposited.

(b) The department may make development loans from the account to a certified microbusiness development corporation.

~~(c) Interest earned on the account must be deposited in the microbusiness finance program administrative account established in subsection (2).~~

(2) There is ~~in the state special revenue fund a microbusiness finance program administrative account into which~~ *an economic development state special revenue account created in 90-1-205 in which the following money* must be deposited:

(a) all interest received on development loans received directly from microbusiness development corporations;

(b) service charges or fees received from certified microbusiness development corporations;

(c) grants, donations, and private or public income; and

(d) all interest earned on money in the account and interest earned on money in the account provided for in subsection (1)(a).

~~(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.~~

~~(4)~~*(3)* Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

~~(5)~~*(4)* To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) the geographic representation of all regions of the state, including urban, rural, and tribal communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with a plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with a plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

~~(6)~~*(5)* Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed $100,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed $100,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed $100,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more

microbusinesses in which any one person holds more than a 20% equity share may not exceed $100,000.

~~(7)~~*(6)* Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

~~(8)~~*(7)* Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least $1 from other sources for each $6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

~~(9)~~*(8)* Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department and that are consistent with the purposes of and with rules promulgated to implement this part.

~~(10)~~*(9)* Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.

~~(11)~~*(10)* A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan."

Section 3. Section 17-6-409, MCA, is amended to read:

"**17-6-409. Authority to accept funds -- funding authorization.** ~~(1)~~ The department may accept grants, donations, and other private and public income, including payments of interest on loans made by the department under the provisions of this part and fees charged by the department. The department shall deposit all money received under this section in the ~~microbusiness finance program administrative account established in 17-6-407~~ *economic development state special revenue account established in 90-1-205*.

~~(2) The money in the microbusiness finance program administrative account may be appropriated for the purposes stated in this part.~~"

Section 4. Section 39-11-205, MCA, is amended to read:

"**39-11-205. Primary sector business training account.** (1) There is an account in the state special revenue fund called the primary sector business training account.

(2) On July 1 of each year, the state treasurer shall transfer any funds appropriated to the department of commerce primary sector business training program from the general fund to the primary sector business training account.

(3) ~~Money~~ *Subject to legislative fund transfer, the money* deposited or retained in the account must be used for:

(a) the primary sector business training program;

(b) program costs; and

(c) expenses incurred in administering the primary sector business training program.

(4) Money deposited in the account must be retained and may not revert to the general fund.

(5) All interest earned on money in the account must be retained and used for the purposes outlined in subsection (3)."

Section 5. Section 90-1-201, MCA, is amended to read:

"**90-1-201. Big sky economic development program -- definitions.** (1) (a) There is a big sky economic development program that consists of:

(i) the big sky economic development fund established in 17-5-703; and

(ii) the economic development special revenue account provided for in 90-1-205.

(b) Interest and income from the big sky economic development fund may be used to administer the big sky economic development program and to provide financial assistance for qualified economic development purposes under this part.

(2) As used in this part, the following definitions apply:

~~(a) "Certified regional development corporation" has the meaning provided in 90-1-116.~~

~~(b)~~*(a)* "Department" means the department of commerce provided for in 2-15-1801.

~~(c)~~*(b)* "Economic development organization" means:

(i) ~~(A)~~ 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); *or*

~~(B) an entity certified by the department under 90-1-116; or~~

~~(C) an entity established by a local government; or~~

(ii) an entity actively engaged in economic development and business assistance work in a region of the state.

~~(d) "Employee benefits" means health, welfare, and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.~~

(c) "Eligible business" means a for-profit or nonprofit business or tribally owned business that is engaged in business activities in the state that will provide a significant positive economic impact to the community, region, or state.

~~(e) "High-poverty county" means a county in this state that has a poverty rate greater than Montana's average poverty rate as determined by the U.S. bureau of the census estimates for the most current year available.~~

~~(f) "Local government" means a county, consolidated government, city, town, or district or local public entity with the authority to spend or receive public funds.~~

~~(g) "Tribal government" means one of the federally recognized tribal governments of Montana.~~"

Section 6. Section 90-1-202, MCA, is amended to read:

"**90-1-202. Purpose.** (1) The legislature finds and declares that economic development is a public purpose. The purpose of the big sky economic development program is to assist in economic development for Montana that will:

(a) create good-paying jobs for Montana residents;

(b) promote long-term, stable economic growth in Montana;

~~(c) encourage local economic development organizations;~~

~~(d) create partnerships between the state, local governments, tribal governments, and local economic development organizations that are interested in pursuing these same economic development goals;~~

~~(e)~~*(c)* retain or expand existing businesses;

~~(f)~~*(d)* provide a better life for future generations through greater economic growth and prosperity in Montana; and

~~(g)~~*(e)* encourage workforce development~~, including workforce training and job creation, in high-poverty counties by providing targeted assistance~~.

(2) As provided in 30-20-206, manufacturing ammunition components is a qualified economic development purpose."

Section 7. Section 90-1-203, MCA, is amended to read:

"**90-1-203. Types of financial assistance available.** (1) The department shall provide for and make grants and loans available to ~~local governments and tribal governments~~ *eligible businesses* for economic development projects ~~and to certified regional development corporations~~ from the money in the economic development special revenue account provided for in 90-1-205.

(2) A grant or loan may not be used for a project that would result in the transfer or relocation of jobs from one part of the state to another part of the state."

Section 8. Section 90-1-204, MCA, is amended to read:

"**90-1-204. Priorities for funding -- rulemaking.** (1) Under the big sky economic development program provided for in 90-1-201, the department must receive proposals for grants and loans from ~~local governments and tribal governments~~ *eligible businesses and may accept proposals from economic development organizations and preferred lenders on behalf of businesses*. ~~A local government shall~~ *Eligible businesses may* work with an economic development organization on a proposal. The department shall work with ~~the local government~~ *eligible businesses* and the economic development organization ~~or with an applicant tribal government~~ in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program *in collaboration with economic development organizations actively serving communities. The department shall consider low-interest loans, forgivable loans, and grants when adopting rules*. ~~In adopting rules, the department shall look to the rules adopted for the Montana coal endowment program and other similar state programs. To the extent feasible, the department shall make the rules compatible with those other programs. To the extent feasible, the department shall employ an approach pertaining to the use of funds so that, except as provided in subsection (2)(b), the needs of rural areas are balanced with the needs of the state's urban centers.~~

~~(b) For high-poverty counties, the department shall employ an approach pertaining to the use of funds that is intended to lower poverty levels in the county to a percentage at which the county no longer is defined as a high-poverty county.~~

~~(c)~~*(b)* The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of ~~funds by~~ *these funds include but are not limited to*:

~~(i) local governments and tribal governments include but are not limited to:~~

~~(A)~~*(i)* a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;

~~(B)~~*(ii)* a grant or low-interest loan for relocation expenses for a basic sector company; ~~and~~

~~(C)~~*(iii)* rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company;

(iv) short-term working capital loans;

(v) workforce activities or job creation; and

(vi) planning projects that would provide significant economic benefit to require matching funds to be considered.

~~(ii) a certified regional development corporation or a tribal government include:~~

~~(A) support for business improvement districts and central business district redevelopment;~~

~~(B) industrial development;~~

~~(C) feasibility studies;~~

~~(D) creation and maintenance of baseline community profiles; and~~

~~(E) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds.~~

~~(d) (i) The rules must provide for distribution methods for financial assistance available to local governments and tribal governments. The rules must provide for distribution based upon the number of jobs expected to be created because of the funding.~~

~~(ii) Funding may not exceed $5,000 for each expected job, except that funding for a project in a high-poverty county may not exceed $7,500 for each expected job.~~

~~(iii)~~*(c)* The rules must require ~~equal~~ matching funds for a grant or loan~~, except that the rules for a grant or a loan in a high-poverty county may allow a 50% to 100% match requirement for the high-poverty county~~.

~~(e)~~*(d)* The rules may provide for greater incentives for a ~~high-poverty~~ *rural* county.

~~(f) The rules must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which a grant is given are not created.~~

~~(g) A grant or loan under the big sky economic development program may be made only for a new job that has an average weekly wage that meets or exceeds the lesser of 170% of Montana's current minimum wage or the current average weekly wage of the county in which the employees are to be principally employed. For purposes of this subsection (2)(g) and subject to subsection (2)(h), the department may consider the value of employee benefits in determining whether the wage requirements have been met.~~

~~(h) Nothing in subsection (2)(g) exempts an employer from minimum wage requirements.~~"

Section 9. Section 90-1-205, MCA, is amended to read:

"**90-1-205. Economic development special revenue account.** (1) There is an economic development state special revenue account. The account receives earnings from the big sky economic development fund as provided in 17-5-703. The money in the account may be used only as provided in this part.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department. ~~Of the~~ *The* money ~~that is~~ deposited in the account ~~that is not~~ *must be* used *as provided in this part,* for administrative expenses*,* or for other economic development purposes~~:~~

~~(a) 75% must be allocated for distribution to local governments and tribal governments to be used for job creation efforts; and~~

~~(b) 25% must be allocated for distribution to certified regional development corporations, economic development organizations that are located in a county that is not part of a certified regional development corporation, and tribal governments~~."

Section 10. Fund transfers to economic development state special revenue account. By September 1, 2023, the state treasurer shall transfer all funds from the following accounts to the economic development state special revenue account established in 90-1-205:

(1) the microbusiness finance program administrative account established in 17-6-407; and

(2) the primary sector business training account established in 39-11-205.

Section 11. Transfer of defederalized economic development funds. (1) By September 1, 2023, and by September 1 of subsequent years in which funds become available, the state treasurer shall transfer the following defederalized funds to the economic development state special revenue account established in 90-1-205:

(a) all American Rescue Plan Act of 2021, Public Law 117-2, funds appropriated in section 12, Chapter 401, Laws of 2021, to the office of budget and program planning and allocated for use by the department of commerce for economic development programs, except programs administered by the board of investments;

(b) all state small business credit initiative funds authorized by section 15, Chapter 401, Laws of 2021, and section 3301 of the American Rescue Plan Act of 2021, Public Law 117-2;

(c) all U.S. economic development administration revolving loan funds administered at the department of commerce; and

(d) any other defederalized economic development funds administered at the department of commerce.

(2) For the purposes of this section, "defederalized" means the federal government has released the federal requirements associated with specific awarded funds; and therefore these funds are no longer considered federal funds and are released of any former obligations of the federal award.

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

Section 13. Effective date. [This act] is effective July 1, 2023.

Approved May 19, 2023

CHAPTER NO. 637

[HB 920]

AN ACT PROVIDING FOR A BUST COMMEMORATING THOMAS CARTER, MONTANA'S LAST TERRITORIAL CONGRESSIONAL DELEGATE, FIRST UNITED STATES REPRESENTATIVE, AND A UNITED STATES SENATOR, TO BE PLACED IN THE CAPITOL; REQUIRING PRIVATE FUNDING; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING THAT THE MONTANA HISTORICAL SOCIETY PROCURE THE ITEM AND ADMINISTER FUNDS FOR THAT PURPOSE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 2-17-807 AND 2-17-808, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Thomas Carter was born on October 30, 1854, in Junior Furnace, Ohio, as the son of Irish immigrants, Edward and Margaret Carter, and brother of Edward, Margaret, and Julia, and spent most of his childhood in the Midwest learning the value of hard work in agriculture; and

WHEREAS, Thomas Carter moved on from his publishing career in Iowa to begin practicing law in Helena, Montana, and found love by marrying Ellen Galen; and

WHEREAS, Thomas Carter became the public administrator for Lewis and Clark County and climbed further still in his political career when he was nominated and elected as a territorial congressional delegate in 1888, and he remained in office throughout the admission of Montana to statehood in 1889; and

WHEREAS, Thomas Carter notably held the position as Chairman of the Committee on Mines and Mining during his first year in the United States House of Representatives and was appointed Commissioner of the General Land Office by President Harrison until 1892; and

WHEREAS, Thomas Carter was elected Senator in 1895 and 1905 wherein he was Chair of the Committee on the Relations with Canada and the Committee on the Census and President of the Board of Commissioners of the Louisiana Purchase Exposition; and

WHEREAS, Thomas Carter served as Chairman of the Republican National Committee, the first Catholic to do so; and

WHEREAS, Thomas Carter is remembered as laying the foundation of Montana politics while maintaining a curiosity and love of learning and being a caring father throughout his entire life; and

WHEREAS, Thomas Carter was a true founding father of the State of Montana.

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

Section 1. Commemoration of Thomas Carter -- special revenue account. (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 bust or other item of tribute commemorating Thomas Carter, Montana's last territorial congressional delegate, first U.S. House representative, and a U.S. senator, may be placed in a state capitol complex building or on the grounds of the state capitol.

(2) The cost for the procurement, installation, and maintenance of the bust or other item of tribute must be paid from private funds.

(3) There is a special revenue account to the credit of the Montana historical society for the purposes of this section. The Montana historical society shall oversee the procurement and installation of the bust or other item of tribute and administer funds in the account.

(4) The design, installation, maintenance, and funding of the bust or other item of tribute are subject to the 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)(g)~~ *(2)(h)*, 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.

(h) The bust commemorating Thomas Carter authorized in 2-17-808(1)(k) may be displayed in 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. (Subsection (2)(g) void on occurrence of contingency--sec. 4, Ch. 164, L. 2019.)"

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.*; and*

(k) a bust commemorating Thomas Carter, who served as the last territorial congressional delegate, the first United States representative, and a United States senator for the state.

(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;

(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 Scriver entitled "symbol of the pros";

(b) the monuments to the liberty bell, the veterans' and pioneer memorial building--landscape beautification project, Montana veterans, Pearl Harbor survivors, and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";

(b) the art displays known as "Montana workers--mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;

(d) the busts of Lee Metcalf and Sam W. Mitchell;

(e) the plaque and Lou Peters award commemorating Karl Ohs; and

(f) the plaque and memorial commemorating Joseph P. Mazurek.

(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 (2)(f) void on occurrence of contingency--sec. 4, Ch. 164, L. 2019.)"

Section 4. Appropriation. There is appropriated $100 from the general fund to the Montana historical society for the biennium beginning July 1, 2023, for the costs associated with the procurement and installation of the bust commemorating Thomas Carter.

Section 5. Contingent voidness. If the bust or other item of tribute provided for in [section 1] is not installed by July 1, 2028, then [this act] is void.

Section 6. Effective date. [This act] is effective July 1, 2023.

Approved May 19, 2023

CHAPTER NO. 638

[SB 3]

AN ACT REVISING FOREST TAXATION LAWS; REVISING THE CLASS TEN FOREST PROPERTY REAPPRAISAL CYCLE; REVISING FOREST PROPERTY TAX RATES; REQUIRING THE DEPARTMENT OF REVENUE TO VALUE FOREST PROPERTY; REVISING THE STUMPAGE VALUE AVERAGING METHOD; AMENDING SECTIONS 15-6-143, 15-7-102, 15-7-111, 15-7-112, AND 15-44-103, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 15-6-143, MCA, is amended to read:

"**15-6-143. Class ten property -- description -- taxable percentage.** (1) Class ten property includes all forest lands, as defined in 15-44-102, and property described in subsection (2).

(2) Any parcel of growing timber totaling less than 15 acres qualifies as class ten property if, in a prior year, the parcel totaled 15 acres or more and qualified as forest land but the number of acres was reduced to less than 15 acres for a public use described in 70-30-102 by the federal government, the state, a county, or a municipality and, since that reduction in acres, the parcel has not been further divided.

(3) Class ten property is taxed at:

(a) ~~0.34%~~ *0.29%* of its forest productivity value in tax year ~~2021~~ *2023*;

(b) ~~0.31%~~ *0.27%* of its forest productivity value in tax year ~~2022~~ *2024*; and

(c) 0.37% of its forest productivity value in tax years after ~~2022~~ *2024*."

Section 2. Section 15-7-102, MCA, is amended to read:

"**15-7-102. Notice of classification, market value, and taxable value to owners -- appeals.** (1) (a) Except as provided in 15-7-138, the department shall mail or provide electronically to each owner or purchaser under contract for deed a notice that includes the land classification, market value, and taxable value of the land and improvements owned or being purchased. A notice must be mailed or, with property owner consent, provided electronically to the owner only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) The notice must include the following for the taxpayer's informational and informal classification and appraisal review purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the intangible land value assistance program provided for in 15-6-240, the property tax assistance programs provided for in Title 15, chapter 6, part 3, and the residential property tax credit for the elderly provided for in 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year;

(iii) the market value for the prior reappraisal cycle;

(iv) if the market value has increased by more than 10%, an explanation for the increase in valuation;

(v) a statement that the notice is not a tax bill; and

(vi) a taxpayer option to request an informal classification and appraisal review by checking a box on the notice and returning it to the department.

(c) When the department uses an appraisal method that values land and improvements as a unit, including the sales comparison approach for residential condominiums or the income approach for commercial property, the notice must contain a combined appraised value of land and improvements.

(d) Any misinformation provided in the information required by subsection (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each classification and appraisal to the correct owner or purchaser under contract for deed and mail or provide electronically the notice in written or electronic form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail or provide electronically the notice to a new owner or purchaser under contract for deed unless the department has received the realty transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed or provided electronically. The department shall notify the county tax appeal board of the date of the mailing or the date when the taxpayer is informed the information is available electronically.

(3) (a) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an informal classification and appraisal review by submitting an objection on written or electronic forms provided by the department for that purpose or by checking a box on the notice and returning it to the department in a manner prescribed by the department.

(i) For property other than class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection must be submitted within 30 days from the date on the notice.

(ii) For class three property described in 15-6-133, ~~and~~ class four property described in 15-6-134, *and class ten property described in 15-6-143,* the objection may be made only once each valuation cycle. An objection must be made in writing or by checking a box on the notice within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for both years of the 2-year valuation cycle. An objection made more than 30 days from the date of the classification and appraisal notice will be applicable only for the second year of the 2-year valuation cycle. For an objection to apply to the second year of the valuation cycle, the taxpayer shall make the objection in writing or by checking a box on the notice no later than June 1 of the second year of the valuation cycle or, if a classification and appraisal notice is received in the second year of the valuation cycle, within 30 days from the date on the notice.

~~(iii) For class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle. An objection must be made in writing or by checking a box on the notice within 30 days from the date on the classification and appraisal notice for a reduction in the appraised value to be considered for all years of the 6-year appraisal cycle. An objection made more than 30 days after the date of the classification and appraisal notice applies only for the subsequent remaining years of the 6-year reappraisal cycle. For an objection to apply to any subsequent year of the valuation cycle, the taxpayer shall make the objection in writing or by checking a box on the notice no later than June 1 of the year for which the value is being appealed or, if a classification and appraisal notice is received after the first year of the valuation cycle, within 30 days from the date on the notice.~~

(b) If the objection relates to residential or commercial property and the objector agrees to the confidentiality requirements, the department shall provide to the objector, by posted mail or electronically, within 8 weeks of submission of the objection, the following information:

(i) the methodology and sources of data used by the department in the valuation of the property; and

(ii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.

(c) At the request of the objector or a representative of the objector, and only if the objector or representative signs a written or electronic confidentiality agreement, the department shall provide in written or electronic form:

(i) comparable sales data used by the department to value the property;

(ii) sales data used by the department to value residential property in the property taxpayer's market model area; and

(iii) if the cost approach was used by the department to value residential property, the documentation required in 15-8-111(3) regarding why the comparable sales approach was not reliable.

(d) For properties valued using the income approach as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.

(e) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall consider an independent appraisal provided by the taxpayer if the appraisal meets standards set by the Montana board of real estate appraisers and the appraisal was completed within 6 months of the valuation

date pursuant to 15-8-201. If the department does not use the appraisal provided by the taxpayer in conducting the appeal, the department shall provide to the taxpayer the reason for not using the appraisal. The department shall give reasonable notice to the taxpayer of the time and place of the review.

(f) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination by mail or electronically. The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property or data available for the property that is kept by the department and used for calculating the appraised value. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection on written or electronic forms provided by the department or by checking a box on the notice; and

(b) the department has provided to the objector by mail or electronically its stated reason in writing for making the adjustment.

(5) A taxpayer's written objection or objection made by checking a box on the notice and supplemental information provided by a taxpayer that elects to check a box on the notice to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If a property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the Montana tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board, pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination. A county tax appeal board or the Montana tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the Montana tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 3. 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~~ *All* property within class three*,* ~~and~~ class four*, and class ten* 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*, and class ten* property is complete on December 31 of every second year of the reappraisal cycle~~, and the reappraisal of class ten property is complete on December 31 of the sixth year of the reappraisal cycle. The amount of the change in valuation from the base year for class ten property must be phased in each year at the rate of 16.66% of the change in valuation~~.

(4) During the second year of each reappraisal cycle, the department shall provide the revenue interim committee with a report, in accordance with 5-11-210, of tax rates for the upcoming reappraisal cycle that will result in taxable value neutrality for each property class.

(5) The department shall administer and supervise a program for the reappraisal of all taxable property within ~~classes~~ *class* three*,* ~~and~~ *class* four*, and class ten*. The department shall adopt a reappraisal plan by rule. The reappraisal plan adopted must provide that all class three*,* ~~and~~ class four*, and class ten* 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 phasein for class ten property each year is 16.66%~~.

(6) (a) In completing the appraisal or adjustments under subsection (5), the department shall, as provided in the reappraisal plan, conduct individual property inspections, building permit reviews, sales data verification reviews, and electronic data reviews. The department may adopt new technologies for recognizing changes to property.

(b) The department shall conduct a field inspection of a sufficient number of taxable properties to meet the requirements of subsection (5).

(7) (a) In each notice of reappraisal sent to a taxpayer, the department, with the support of the department of administration, shall provide to the taxpayer information on:

(i) the consumer price index adjusted for population and the average annual growth rate of Montana personal income; and

(ii) the estimated annualized change in property taxes levied over the previous 10 years by the state, county, and any incorporated cities or towns within the county and local school average mills by county.

(b) In every even-numbered year, the department shall publish in a newspaper of general circulation in each county the information required pursuant to subsection (7)(a) by the second Monday in October."

Section 4. Section 15-7-112, MCA, is amended to read:

"**15-7-112. Equalization of valuations.** The method of appraisal and assessment provided for in 15-7-111 must be used in each county of the state so that comparable properties with similar full market values and subject to taxation in Montana have substantially equal taxable values in the tax year ~~and, for class ten property, substantially equal taxable values at the end of each cyclical revaluation cycle~~."

Section 5. Section 15-44-103, MCA, is amended to read:

"**15-44-103. Legislative intent -- value of forest lands -- valuation zones.** (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices,

and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land productivity valuation for each forest valuation zone, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula V = I/R, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula I = (M x SV) + AI - C, where:

(i) I is the per-acre net income;

(ii) M is the mean annual net wood production;

(iii) SV is the stumpage value;

(iv) AI is the per-acre agriculture-related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate determined by the department as provided in subsection (6).

(5) Net income must:

(a) be calculated for each year of a base period, which is the most recent 10-year period for which data is available prior to the date the revaluation cycle ends. Data referred to in subsection (4)(b) must be averaged.

(b) be based on ~~a rolling~~ *the* average ~~of~~ stumpage value of timber harvested within the forest valuation zone*, excluding the lowest and highest annual stumpage value in the period,* and on the associated production cost data for the base period from sources considered appropriate by the department; and

(c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.

(6) The capitalization rate must be calculated for each year of the base period and is the average capitalization rate determined by the department after consultation with the forest lands taxation advisory committee, plus the effective tax rate. The capitalization rate must be adopted by rule. However, the capitalization rate for each year of the base period may not be less than 8%.

(7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.

(8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.

~~(9) In determining the forest productivity value of forest lands and in computing the forest land valuation, the department shall use information and data provided by the university of Montana-Missoula.~~

~~(10)~~*(9)* (a) There is a forest lands taxation advisory committee consisting of:

(i) four members with expertise in forest matters, one appointed by the majority leader of the senate, one by the minority leader of the senate, one by the majority leader of the house of representatives, and one by the minority leader of the house of representatives; and

(ii) five members appointed by the governor, two who are industrial forest landowners, two who are nonindustrial forest landowners, and one who is a county commissioner.

(b) The committee must be appointed and convened no later than July 1 of the year that is 2 years prior to the first year of each reappraisal cycle. The terms of the members expire on June 30 of the first year of each reappraisal cycle.

(c) The advisory committee shall:

(i) review data required by subsections (2) through (6)~~,~~ *and* (8), ~~and (9),~~ including data on productivity value, stumpage value, wood production, capitalization rate, net income, and agriculture-related income;

(ii) recommend to the department any adjustments to data if required by changes in government forest land programs, market conditions, or prevailing forest lands practices;

(iii) recommend appropriate base periods and averaging methods to the department;

(iv) verify for each forest valuation zone and forest land classification and subclassification under subsection (3) that the income determined in subsection (5) reasonably approximates that which the average Montana forest landowner could have attained;

(v) recommend forest land valuation techniques to the department;

(vi) meet in Montana at least once a year; and

~~(vi)~~*(vii)* report biennially on committee activity, in accordance with 5-11-210, to the revenue interim committee provided for in 5-5-227.

~~(11) The members of the forest lands taxation advisory committee must be appointed and the committee must be convened no later than July 15, 2021, for the specific purpose of reviewing appraisal methodology with the department. For the period of July 1, 2021, through December 31, 2022, the committee shall work with the department to fulfill the requirements of the committee as outlined in subsection (10)(c) and bring forward updates to the revenue interim committee and any recommended changes to the 2023 legislature. If the committee does not meet, the department or the committee shall inform the revenue interim committee. (Subsection (11) terminates June 30, 2023--sec. 3, Ch. 141, L. 2021.)~~"

Section 6. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2 through 5] are effective January 1, 2025.

Section 7. Retroactive applicability. [Section 1] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2022.

Approved May 19, 2023

CHAPTER NO. 639

[SB 6]

AN ACT GENERALLY REVISING LAWS RELATED TO CONDITIONAL RELEASE OF A PERSON CRIMINALLY COMMITTED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTION 46-14-304, MCA.

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

Section 1. Section 46-14-304, MCA, is amended to read:

"**46-14-304. ~~Revocation of conditional release~~ *Conditional release -- revocation.*** (1) ~~The~~ *A person who has been conditionally released remains under the supervision of the department of public health and human services until the committing court discharges the person.*

(2) When the person is conditionally released, the director of the department of public health and human services shall provide written notice of the conditions of the person's release to any community facility or program that is treating the person, the county attorney of the county in which the person was committed, and the county attorney of the county in which the person is required to receive treatment.

(3) On motion of a county attorney or the department of public health and human services, the court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled; and

(b) based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to suffer from a mental disease or disorder that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) ~~an imminent~~ *a* threat of physical injury to the person or others; or

(iii) substantial property damage.

~~(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.~~

~~(3)~~*(4)* If the court finds that the conditional release should be revoked, the court shall immediately order the person to be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303."

Approved May 19, 2023

CHAPTER NO. 640

[SB 10]

AN ACT REVISING SCHOOL FUNDING LAWS; REMOVING REFERENCES TO AN ADDITIONAL LEVY FOR THE DISTRICT GENERAL FUND; CLARIFYING TRUSTEES' AUTHORITY RELATED TO ACQUIRING OR DISPOSING OF SITES AND BUILDINGS; REVISING THE DEFINITION OF OVER-BASE BUDGET LEVY; AMENDING SECTIONS 20-3-324, 20-6-603, 20-6-621, 20-9-104, 20-9-141, 20-9-306, 20-9-353, AND 20-20-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-3-324, MCA, is amended to read:

"**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of a district shall exercise supervision and control of the schools of the district in providing its educational program pursuant to Article X, section 8, of the Montana constitution, and 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~~, *and* 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 educational program 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. In undertaking its duties related to the district's educational program, the board of trustees may:

(a) waive any specific course requirement otherwise required for graduation based on individual student needs and performance levels, age, maturity, interest, and aspirations of the pupil, in consultation with the pupil's parents or guardians; and

(b) provide credit for a course satisfactorily completed in a period of time shorter or longer than normally required as set forth in 20-9-311(4)(d) or through content proficiency gained through alternative means. Examples of alternative means by which content proficiency may be achieved include but are not limited to correspondence, extension, and distance learning courses, adult education, summer school, work study, work-based learning partnerships, and other experiential learning opportunities, custom-designed courses, and challenges to current courses. Montana schools shall accept units of credit taken with the approval of the accredited Montana school in which the student was then enrolled and which appear on the student's official school transcript.

(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 representing the United States and manufactured in the United States that measures not less than 3 feet by 5 feet;

(24) provide that an American flag representing the United States and manufactured in the United States that measures at least 16 inches by 24 inches be prominently displayed in each classroom in each school of the district no later than the beginning of the school year, except in a classroom in which the flag may get soiled. Districts are encouraged to work with military organizations and civic groups to acquire flags through donation, and this requirement is waived if the flags are not provided by a military organization or 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. 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; and

(30) perform any other duty and enforce any other requirements for the governance of the schools pursuant to the constitutional power of supervision and control of schools vested in elected school boards pursuant to Article X, section 8, of the Montana constitution as prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 2. Section 20-6-603, MCA, is amended to read:

"**20-6-603. Trustees' authority to acquire or dispose of sites and buildings -- when election required.** (1) The trustees of a district may purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. ~~Action~~ *Except as provided in 20-6-604 and 20-6-621, action* may not be taken by the trustees without the approval of the qualified electors of the district at an election called for the purpose of approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

~~(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;~~

~~(c)~~*(b)* the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum general fund budget amount for the district and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

~~(d)~~*(c)* money is otherwise available under the provisions of this title and the ballot for the site approval for the building incorporated a description of the building to be located on the site.

(2) Except for land that is granted to or held by the state in trust or land acquired by conditional deed under the provisions of 20-6-605, the trustees may, upon approval by the electorate, accept as partial or total consideration for the exchange of the land a binding written agreement by a public or private entity seeking the exchange to use the property to provide a service that benefits the school district. The deed for the exchange of land must contain reversionary clauses that allow for the return of the land to school district ownership if the binding written agreement is not complied with.

(3) When an election is conducted under the provisions of this section, it must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 may vote in the election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action."

Section 3. Section 20-6-621, MCA, is amended to read:

"**20-6-621. Selection of school sites -- approval election.** (1) (a) Except as provided in subsection (1)(b), the trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved by the qualified electors of the district before a contract for the purchase of a site is entered into by the trustees.

(b) The trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which ~~an additional levy~~ *a building reserve levy* or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of labor and industry."

Section 4. Section 20-9-104, MCA, is amended to read:

"**20-9-104. 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~~,~~ *or* 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)."

Section 5. 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~~,~~ *and* 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:

(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

(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 6. 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;

(g) the total data-for-achievement payment; and

(h) the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, 100% of the total

data-for-achievement payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) $326,073 for fiscal year 2022 and $334,453 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and

(ii) $326,073 for fiscal year 2022 and $334,453 for each succeeding fiscal year for school districts with an ANB of more than 800, plus $16,304 for fiscal year 2022 and $16,723 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) $54,344 for fiscal year 2022 and $55,741 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(ii) $54,344 for fiscal year 2022 and $55,741 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus $2,718 for fiscal year 2022 and $2,788 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) $54,344 for fiscal year 2022 and $55,741 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and

(B) $54,344 for fiscal year 2022 and $55,741 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus $2,718 for fiscal year 2022 and $2,788 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) $108,690 for fiscal year 2022 and $111,483 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) $108,690 for fiscal year 2022 and $111,483 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 $5,434 for fiscal year 2022 and $5,574 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~~ *within the general fund budget limits established in 20-9-308 and calculated as provided in 20-9-141.*

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying $223 for fiscal year 2022 and $229 for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

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

(13) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying $21.73 for fiscal year 2022 and $22.29 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 $22.70 for fiscal year 2022 and $23.28 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 $7,443 for fiscal year 2022 and $7,634 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 $5,813 for fiscal year 2022 and $5,962 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 $5,813 for fiscal year 2022 and $5,962 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 $7,443 for fiscal year 2022 and $7,634 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 $3,385 for fiscal year 2022 and $3,472 for each succeeding fiscal year by the sum of:

(a) the number of full-time equivalent educators as provided in 20-9-327; and

(b) as provided in 20-9-324, for a school district meeting the legislative goal for competitive base pay of teachers, the number of full-time equivalent teachers that were in the first 3 years of the teacher's teaching career in the previous year.

(17) "Total special education allocation" means the state payment distributed pursuant to 20-9-321 that is the greater of the amount resulting from multiplying $287.93 for fiscal year 2022 and $286.02 for each succeeding fiscal year by the statewide current year ANB or the amount of the previous year's total special education allocation."

Section 7. Section 20-9-353, MCA, is amended to read:

"**20-9-353. ~~Additional financing for general fund~~ *Over-BASE budget levy* -- election for authorization to impose.** (1) The trustees of a district may propose to adopt an over-BASE budget amount for the district general fund that does not exceed the general fund budget limitations, as provided in 20-9-308. *If the trustees of a district are required to submit to the electors of the district a proposition to finance an increase in the over-BASE budget amount pursuant to 20-9-308, the trustees shall comply with the provisions of subsections (2) through (4) of this section.*

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1), any increase in local property taxes authorized by 20-9-308(4) over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements or of the general fund payments established in 20-9-327 through 20-9-330 approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

(3) If the proposition ~~on any additional financing~~ *for an increase in the over-BASE budget levy* for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any ~~additional~~ *over-BASE budget* levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(4) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

~~(5) If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount, as allowed by 20-9-308, to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (4) of this section.~~"

Section 8. Section 20-20-105, MCA, is amended to read:

"**20-20-105. Regular school election day and special school elections -- limitation -- exception.** (1) Except as provided in subsection (5), the first Tuesday after the first Monday in May of each year is the regular school election day.

(2) Except as provided in subsections (4) and (5), a proposition requesting ~~additional funding~~ *an increase in the over-BASE budget levy* under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.

(3) Subject to the provisions of subsection (2), other school elections may be conducted at times determined by the trustees.

(4) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection (2), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, "unforeseen emergency" has the meaning provided in 20-3-322(5).

(5) In years when the legislature meets in regular session or in a special session that affects school funding, the trustees may order an election on a date other than the regular school election day *but prior to August 1* in order for the electors to consider a proposition requesting ~~additional funding~~ *an increase in the over-BASE budget levy* under 20-9-353."

Section 9. Effective date. [This act] is effective July 1, 2023.

Approved May 19, 2023

CHAPTER NO. 641

[SB 11]

AN ACT GENERALLY REVISING CRIMINAL JUSTICE SYSTEM LAWS; CREATING A MONTANA CRIMINAL JUSTICE DATA WAREHOUSE; ALLOWING THE LEGISLATIVE FISCAL ANALYST AND LEGISLATIVE SERVICES DIVISION DIRECTOR DIRECT ACCESS TO THE DATA WAREHOUSE; REVISING DUTIES AND MEMBERSHIP OF THE CRIMINAL JUSTICE OVERSIGHT COUNCIL; ESTABLISHING DATA PROJECT PRIORITIES FOR THE 2024-2025 INTERIM; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING DEFINITIONS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 1-1-207, 5-12-303, 46-1-1103, AND 53-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the lack of complete, consistent, and integrated criminal justice system data has stymied legislative efforts to allocate financial resources and to enact policy changes that would improve outcomes for offenders and crime victims; and

WHEREAS, the seemingly separate pieces of the state and local criminal justice system are intertwined, and the state cannot make effective changes without supporting its local partners; and

WHEREAS, the Law and Justice Interim Committee studied criminal justice data needs and gaps as part of an interim study; and

WHEREAS, as part of the study, state and local stakeholders and committee members spent hours identifying problems and discussing solutions; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration will help change the current reactionary nature of the system; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration can create efficiencies to save money in the future by reducing or eliminating time-consuming and sometimes redundant data entry; and

WHEREAS, any savings from efficiencies created from improved state and local criminal justice system data collection, sharing, and integration or from improved policy choices can benefit both state and local stakeholder and taxpayers, regardless of where in the system an improvement is made; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration ultimately drives public safety by informing funding, policy, caseload, and staffing decisions, as well as how policy decisions can affect prison and supervision populations and recidivism.

WHEREAS, to ensure that data collection is a means to an end, the state must adopt a workable and meaningful definition of recidivism to which data may be applied.

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

Section 1. Definitions. As used in [sections 1 and 2], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agency" has the meaning provided in 2-15-102.

(2) "Board" means the board of crime control established in 2-15-2008.

(3) "Contributing entity" means an agency, the office of court administrator, a local government entity, a nongovernment entity, a tribal government, or a federal government that submits data to the criminal justice data warehouse.

(4) "Council" means the criminal justice oversight council established in 53-1-216.

(5) "Detention center" has the meaning provided in 7-32-2241.

(6) "Local government entity" includes a city, county, or consolidated city-county government entity including but not limited to a county attorney office, law enforcement agency, detention center, court, or other entity created by the city, county, or consolidated city-county government.

(7) "Nongovernment entity" includes a community corrections facility or program established under Title 53, chapter 30, part 3, or other prereleases, treatment centers, or providers that contract with the department of corrections.

Section 2. Criminal justice data warehouse. (1) There is a criminal justice data warehouse housed in the board of crime control. The purpose of the criminal justice data warehouse is to receive, store, secure, and maintain data and information from contributing entities to assist state and local officials to make data-informed decisions about the criminal justice system.

(2) (a) An agency and the court administrator shall contribute data and information to the criminal justice data warehouse on request by the board. A local government entity, a nongovernment entity, a tribal government, or a federal government entity may submit data and information to the criminal justice data warehouse.

(b) A contributing entity retains ownership of the data it contributes to the criminal justice data warehouse.

(3) As the administering agency of the criminal justice data warehouse, the board shall:

(a) adopt a memorandum of understanding with the department of administration for the provision of any technical assistance or services required to establish and maintain the criminal justice data warehouse;

(b) work in conjunction with the department of administration to assure the confidentiality of all records and data collected in the criminal justice data warehouse and to assure compliance with the applicable state and federal laws governing the privacy of records, data, and personally identifiable information;

(c) consult and collaborate with the council to prioritize data to request from contributing entities, data requests, and research using data from the criminal justice data warehouse;

(d) (i) identify and seek federal grant money that may be used for the purposes of establishing and maintaining the criminal justice data warehouse and achieving priorities established in law;

(ii) prioritize distribution of funds received pursuant to subsection (3)(d)(i) to contributing entities;

(e) adopt a memorandum of understanding with each contributing entity. The memorandum of understanding must describe the data and information being submitted and the schedule on which the data will be submitted and identify the confidentiality of the information and any conditions or restrictions on the use of the data or information; and

(f) grant the legislative fiscal analyst and the legislative services division director direct access to the criminal justice data warehouse in a manner that complies with the regulations of the respective federal programs.

(4) The board may:

(a) require an entity that contributes data or information to deliver the data or information in a certain format and on schedules established for the criminal justice data warehouse;

(b) collaborate with the council and contributing entities to establish policies to address the creation of reports generated through the query of records and data in the criminal justice data warehouse. A nongovernment entity may only collaborate with respect to the data or information contributed by that nongovernment entity; and

(c) adopt a standard memorandum of understanding that state and local criminal justice entities and the courts may use to govern data-sharing agreements.

Section 3. Projects for 2023-2024 interim. (1) In preparation for the 2025 legislative session, the board shall prioritize the following projects:

(a) create a unique identifier to link data from separate state and local criminal justice agencies and the judicial branch in a manner that is efficient and protects the confidentiality requirements for any personally identifiable information;

(b) consult with the council to determine research priorities to answer existing questions about the criminal justice system, to prioritize data collection, and to develop data warehouse governance policies;

(c) identify and define the data elements that the board and the council shall collect to achieve the purposes of [sections 1 and 2];

(d) identify willing local stakeholders to create up to four pilot projects to deposit existing local criminal justice data in the criminal justice data warehouse, identify technology needs, and document data processes;

(e) create a list of the current vendors used by state and local criminal justice agencies and the judicial branch;

(f) identify and apply for federal funds that would help the board and the criminal justice coordinating council begin and sustain work on the criminal justice data warehouse;

(g) document data processes that are used to deposit data in the criminal justice data warehouse;

(h) identify methods to share any state savings that could result from improved data collection and integration with local governments; and

(i) identify information from other state agencies, including the department of public health and human services, or from tribal governments or the federal government that could be included in the criminal justice data warehouse or that would be necessary to answer criminal justice research questions posed by the council.

(2) The board shall:

(a) report to the council and the law and justice interim committee at each regularly scheduled meeting between [the effective date of this act] and September 15, 2024, and to other legislative interim committees or administrative committees as requested; and

(b) by September 15, 2024, submit to the council and the law and justice interim committee, legislative finance committee, and the governor's office of budget and program planning a report that includes:

(i) a summary of the work of the board to create the criminal justice data warehouse;

(ii) recommendations for specific next steps to further implement the criminal justice data warehouse and the associated costs and technology needs to accomplish those steps;

(iii) at least 3 examples of data sharing or integration projects the board has completed; and

(iv) a list of policy and funding priorities identified for the 2025 legislative session.

Section 4. Recidivism. Any report produced by a state entity that requires the disclosure of information regarding recidivism or recidivism rates must use the definition of recidivism provided in 1-1-207.

Section 5. Section 1-1-207, MCA, is amended to read:

"**1-1-207. Miscellaneous terms.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in the person's action, vote, or opinion in any public or official capacity.

(2) "Peace officer" has the meaning as defined in 46-1-202.

(3) *(a) "Recidivism" means a circumstance in which any sentence is imposed for a new felony or in which a judge or the board of pardons and parole determines that a person convicted of a felony has violated the person's terms of probation or parole within 5 years of the imposition of a sentence for a previous felony conviction.*

(b) The term does not include a violation that is a compliance violation, as defined in 46-23-1001.

(4) "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place."

Section 6. Section 5-12-303, MCA, is amended to read:

"**5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and

information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies and may not disclose confidential records or information to legislators.

(3) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the legislative fiscal analyst when the values on the requested return, including estimated payments, are considered necessary by the legislative fiscal analyst to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.

(4) (a) The department of public health and human services shall provide the legislative fiscal analyst direct access to the department's secure data warehouse as the phases of the secure data warehouse project are implemented.

(b) The department of public health and human services shall consult with the legislative fiscal analyst and shall establish user requirements to ensure the legislative fiscal analyst does not have access to direct identifiers stored on the secure data warehouse. The department of public health and human services shall consult with the legislative fiscal analyst and shall establish requirements to ensure the legislative fiscal analyst does not have access to direct identifiers stored in other data systems where the data is not available through the secure data warehouse after the phases of the secure data warehouse project are implemented.

(c) The data must be made available to the legislative fiscal analyst in a format that complies with the regulations of the respective federal programs.

(d) The department of public health and human services shall submit quarterly reports in an electronic format to the legislative finance committee and the children, families, health, and human services interim committee in accordance with 5-11-210 on the following:

(i) the implementation of the phases of the secure data warehouse project;

(ii) the user requirements established by the department and the legislative fiscal analyst; and

(iii) the status of the legislative fiscal analyst's access to the secure data warehouse.

(5) The board of crime control shall provide the legislative fiscal analyst direct access to the criminal justice warehouse established in [section 2] in a manner that complies with the regulations of the respective federal programs.

~~(5)~~*(6)* Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

~~(6)~~*(7)* This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure or if the department

of revenue notifies the fiscal analyst that specified records or information may contain confidential information."

Section 7. Section 46-1-1103, MCA, is amended to read:

"**46-1-1103. Definitions.** As used in this part, the following definitions apply:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this part and would benefit from the provisions of this part.

(2) "Continuum of care" means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Drug" includes:

(a) a controlled substance, which is a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession;

(b) an illegal drug, which is a drug whose manufacture, sale, use, or possession is forbidden by law; or

(c) a harmful substance, which is a misused substance otherwise legal to possess, including alcohol.

(4) "Drug offender" means a person charged with a drug-related offense or an offense in which substance abuse is determined to have been a significant factor in the commission of an offense.

(5) "Drug treatment court" means a court established by a court pursuant to this part implementing a program of incentives and sanctions intended to assist a participant to end the participant's addiction to drugs and to cease criminal behavior associated with drug use and addiction.

(6) "Drug treatment court coordinator" means an individual who, under the direction of the drug treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the drug treatment court.

(7) "Drug treatment court team" means a group of individuals appointed by the drug treatment court that may consist of the following members:

(a) the judge, which may include a magistrate or other hearing officer;

(b) the prosecutor;

(c) the defense attorney;

(d) a law enforcement officer;

(e) the drug treatment court coordinator;

(f) a probation and parole officer;

(g) substance abuse treatment providers;

(h) a representative from the department of public health and human services; and

(i) any other person selected by the drug treatment court.

(8) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.

(9) "Recidivism" ~~means any arrest for a serious offense that results in the filing of a charge and can carry a sentence of 1 or more years~~ *has the meaning provided in 1-1-207*.

(10) "Staff meeting" means the meeting before a drug offender's appearance in drug treatment court in which the drug treatment court team discusses a coordinated response to the drug offender's behavior.

(11) "Substance abuse" means the illegal or improper consumption of a drug as defined in this section.

(12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use."

Section 8. Section 53-1-216, MCA, is amended to read:

"**53-1-216. Montana criminal justice oversight council -- duties -- membership.** (1) *(a)* There is a Montana criminal justice oversight council. The council consists of ~~16~~ *18* members as follows:

~~(a)~~ (i) two members of the house of representatives, one selected by the speaker of the house and one selected by the house minority leader; and

(ii) two members of the senate, one selected by the president of the senate and one selected by the senate minority leader;

~~(b)~~*(iii)* one district court judge *and one municipal court judge* selected by the chief justice of the Montana supreme court;

(iv) the attorney general or the attorney general's designee;

~~(c)~~*(v)* the director ~~and the deputy director~~ of the department of corrections;

(vi) the director of the office of state public defender;

(vii) the director of the department of public health and human services;

~~(d)~~*(viii)* a county sheriff and a county attorney appointed by the attorney general; and

~~(e)~~*(ix)* the following individuals appointed by the governor:

~~(i)~~*(A)* one member of a federally recognized Indian tribe located within the boundaries of the state of Montana who has expertise in criminal justice;

~~(ii)~~*(B)* one member of the board of pardons and parole;

~~(iii) one member who represents the office of state public defender;~~

~~(iv)~~*(C)* one representative of crime victims *who also serves on the board of crime control established in 2-15-2008*;

~~(v)~~*(D)* one representative of civil rights advocates; and

~~(vi)~~*(E)* two representatives of community corrections providers, one of whom must represent a treatment facility and one of whom must represent a prerelease center.

(b) When appointing members as required in subsection (1)(a), the governor and attorney general shall consider appointing individuals who also serve on the board of crime control established in 2-15-2008.

(2) The legislative services division shall provide clerical and administrative staff services to the council.

(3) The council shall elect a presiding officer*, who must be a legislator*.

(4) The council shall:

(a) provide direction and recommendations to the board of crime control regarding data to be included in the criminal justice data warehouse established in [section 2] and policies to govern the use of and priorities for the criminal justice data warehouse;

(b) study and recommend solutions to address issues facing the criminal justice system and its constituent state and local agencies;

(c) monitor the functioning of the criminal justice system; and

(d) make recommendations to the legislature to address system issues proactively, manage limited resources, improve workloads, make improvements to state and local criminal justice systems, meaningfully address crime, and enhance public safety.

~~(a) review the recommendations of the commission on sentencing established in Chapter 343, Laws of 2015;~~

~~(b) receive and analyze data collected by agencies and entities charged with implementing the recommendations of the commission on sentencing and that are collecting data during the implementation and management of specific recommendations;~~

~~(c) assess outcomes from the recommendations the commission on sentencing has made and corresponding criminal justice reforms; and~~

~~(d) request, receive, and review data and report on performance outcome data relating to criminal justice reform.~~

~~(5) Data evaluation performed by the council must:~~

~~(a) assess the current electronic records utilized by criminal justice agencies;~~

~~(b) review and list all variables collected in each agency's information management system;~~

~~(c) establish a baseline for historical data comparisons;~~

~~(d) determine whether data is linked to specific offenders through a unique identifying factor;~~

~~(e) review archival data and agencies' data retention policies;~~

~~(f) determine whether presentence investigation reports are completed electronically in the department of corrections' case management system within established statutory timelines;~~

~~(g) review any established data protocols for pretrial services;~~

~~(h) assess if the data collected or recommended to be collected on offenders and programs will provide criminal justice agencies, the legislature, and the public adequate information to determine whether correctional programs produce standardized outcomes across the state and are an efficient use of state resources; and~~

~~(i) review and suggest improvements for behavioral health screening instruments and other screening instruments as needed to ensure the integrity of data that is captured in criminal justice agencies' information management systems.~~

~~(6) The council shall examine the feasibility of creating and maintaining a public portal through which criminal justice data can be accessed, including data on court case filings, correctional populations, and historical and legacy data sets.~~

~~(7)~~*(5)* The council shall submit a report to the governor and legislature, as provided in 5-11-210. The report must include:

~~(a)~~ a description of the council's proceedings since the previous report;

~~(b) a summary of savings from criminal justice reforms and recommendations for how the savings should be reinvested to reduce recidivism;~~

~~(c) a description of performance measures and outcomes related to criminal justice reforms; and~~

~~(d) a narrative of the council's progress on establishing data collection and uniformity standards and any changes that have been implemented as a result of the council's work.~~

~~(8) The council may appoint a working group to track any legislation resulting from criminal justice reforms and to perform other detailed analysis as directed by the council. If appointed, the working group shall meet regularly and report to the council as the council requires. The working group may include representatives of criminal justice agencies and key constituencies that are not members of the council.~~

~~(9)~~*(6)* ~~Using the process established in legislative rules for executive agency legislative requests, the~~ *The* council may request legislation to enact changes to the state's criminal justice system that the council finds necessary.

~~(10)~~*(7)* The judicial branch, the department of corrections, the department of public health and human services, the board of pardons and parole, and the legislative services and fiscal divisions shall provide ~~data and~~ information *and assistance* as requested by the council.

~~(11)~~*(8)* ~~Appointments made under subsection (1) must be made within 60 days after July 1, 2019.~~ A vacancy on the council must be filled in the manner of the original appointment. *If a vacancy on the council remains unfilled by the appropriate appointing authority for more than 60 days, the council may vote to appoint a member to serve on the council until the appropriate appointing authority makes an appointment.*

~~(12)~~*(9)* Council members must be reimbursed for travel expenses as provided in 2-18-501 through 2-18-503. Members of the council who are full-time salaried officers or employees of this state or any political subdivision are entitled to their regular compensation. Legislative members must be compensated as provided in 5-2-302.

~~(13)~~*(10)* The council shall provide updates to the law and justice interim committee and the legislative finance committee as requested."

Section 9. Transition. Members of the criminal justice oversight council must be appointed within 30 days of [the effective date of this act].

Section 10. Appropriation. There is appropriated $2,500 from the general fund to the legislative services division for the biennium beginning July 1, 2023, for the purposes of paying for additional travel costs related to the new member of the criminal justice oversight council.

Section 11. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 44, chapter 7, and the provisions of Title 44, chapter 7, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 3].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved May 19, 2023

CHAPTER NO. 642

[SB 27]

AN ACT REVISING REPORTING REQUIREMENTS FOR THE MONTANA ECONOMIC DEVELOPMENT INDUSTRY ADVANCEMENT FILM TAX INCENTIVES; REVISING DUE DATES FOR THE SUBMISSION OF COSTS AND THE PRODUCTION EXPENDITURE VERIFICATION REPORT; REVISING WHICH PRODUCTIONS MUST FILE A PRODUCTION EXPENDITURE VERIFICATION REPORT; AMENDING SECTIONS 15-31-1003, 15-31-1005, AND 15-31-1006, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-31-1003, MCA, is amended to read:

"**15-31-1003. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a subsidiary of which more than 50% of the voting stock is owned directly by the parent corporation or another member of the Montana combined group.

(2) "Base investment" means the amount expended by a production company as production expenditures and compensation incurred in this state that are directly used in a state-certified production.

(3) (a) "Compensation" means Montana wages, salaries, commissions, payments to a loan-out company subject to the provisions of subsection (3)(c),

union benefits, fringe benefits, and any other form of remuneration paid to employees for personal services performed in this state.

(b) The term does not include compensation paid that is less than the minimum wage described in 39-3-409.

(c) The term includes payments to a loan-out company by a production company if the production company withheld and remitted Montana income tax at the rate of 6.9% on all payments to the loan-out company for services performed in this state. The amount withheld is considered to have been withheld by the loan-out company on wages paid to its employees for services performed in this state. The amounts withheld must be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Montana. For purposes of this chapter, loan-out company nonresident employees performing services in this state must be considered taxable nonresidents and the loan-out company is subject to income taxation in the tax year in which the loan-out company's employees perform services in this state, notwithstanding any other provisions of Title 15. The withholding liability is subject to penalties and interest as provided in 15-1-216.

(d) With respect to a single crew member or production staff member, excluding an actor, director, producer, or writer, the portion of any compensation that exceeds $500,000 for a single production is not included when calculating the base investment.

(e) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest are considered as having been paid to the employee and must be aggregated regardless of the means of payment or distribution.

(4) "Game platform" means the electronic delivery system used to launch or play an interactive game.

(5) "Game sequel" means an interactive game that builds on the theme of a previously released interactive game, is distinguished by a new title, and features objectives or characters that are recognizably different from those in the original game.

(6) (a) "Loan-out company" means a personal service company contracted with and retained by a production company to provide individual personnel who are not employees of the production company, including actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, and similar personnel, for performance of services used directly in a qualified production activity.

(b) The term does not include persons retained by a production company to provide tangible property or outside independent contractor services, such as catering, construction, trailers, equipment, and transportation.

(7) "Multimarket commercial distribution" means paid commercial distribution that extends to markets outside the state.

(8) (a) "Postproduction company" means a company that:

(i) maintains a business location physically located in this state;

(ii) is engaged in qualified postproduction activities;

(iii) meets the requirements of 15-31-1005(4) ~~in the tax year for which the postproduction company claims the tax credit provided for in 15-31-1009~~; and

(iv) has been approved by the department of commerce to claim the credit provided for in 15-31-1009.

(b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a

tax obligation of the state, a loan made by the state, or a loan guaranteed by the state.

(9) "Prereleased interactive game" means a new game, the offering of an existing game on a new game platform, or a game sequel that is in the developmental stages of production and that may be available to individuals for testing purposes but is not generally made available or distributed to consumers or to the general public.

(10) (a) "Production company" means a company primarily engaged in qualified production activities that have been approved by the department of commerce.

(b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan guaranteed by the state.

(11) (a) "Production expenditure" means a preproduction or production expenditure incurred in Montana that is directly used for a qualified production activity including:

(i) set construction and operation;

(ii) wardrobes, makeup, accessories, and related services;

(iii) costs associated with photography and sound synchronization expenditures, excluding license fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related services and materials;

(iv) editing and related services;

(v) rental of facilities and equipment;

(vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;

(vii) lodging costs, including hotel rooms and private housing rentals paid for by the production company;

(viii) per diem and living allowance paid to staff, cast, and crew members;

(ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, visual effects services, and animation services;

(x) airfare, if purchased through a Montana travel agency or travel company;

(xi) insurance costs and bonding, if purchased through a Montana insurance agency; and

(xii) other direct costs of producing the project in accordance with generally accepted entertainment industry practices and generally accepted accounting principles.

(b) The term does not include:

(i) compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) through (3)(b)(iv);

(ii) production expenditures for footage shot outside the state;

(iii) marketing;

(iv) story rights;

(v) distribution; or

(vi) postproduction expenditures.

(12) "Qualified Montana promotion" means a promotion of this state approved by the department of commerce and consisting of:

(a) a qualified movie production that includes a 5-second static or animated logo that promotes Montana in the end credits for the life of the project and that includes a link to the official state of Montana website on the project's website;

(b) a qualified television production that includes an embedded 5-second Montana promotion during each broadcast worldwide for the life of the project and that includes a link to the official state of Montana website on the project's website;

(c) a qualified music video that includes the Montana logo at the end of each video and within online promotions;

(d) a qualified interactive game that includes a 15-second Montana advertisement in units sold and embedded in online promotions; or

(e) a qualified television special or sports event for which the network provides complimentary placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming promoting Montana destinations and provided by the department of commerce as provided for in 15-31-1004(7).

(13) "Qualified postproduction activity" means an activity performed in this state on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture, sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation, musical composition, and other activities performed after initial production and including activities performed on previously produced and edited content.

(14) "Qualified postproduction wage" means wages incurred in this state directly in qualified postproduction activities for footage shot inside or outside this state.

(15) (a) "Qualified production" means a new film, video, or digital project including only feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for website creation, television specials, sports events, video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

(b) The term includes projects shot, recorded, or originally created in short or long form, animation, and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.

(c) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, feature films consisting primarily of stock footage not originally recorded in Montana, or projects containing obscenity as defined in 45-8-201(2).

(16) (a) "Qualified production activity" means the production of a new film, video, or digital project in this state and approved by the department of commerce, including only feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for website creation, television specials, sports events, video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

(b) The term includes the production of projects filmed or recorded in this state, in whole or in part and in short or long form, animation and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.

(c) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, or feature films consisting primarily of stock footage not originally recorded in Montana, projects containing obscenity as defined in 45-8-201(2), or projects not shot, recorded, or originally created in Montana.

(17) "Resident" has the meaning provided in 15-30-2101.

(18) "State-certified production" means a production engaged in qualified production activities and certified by the department of commerce as provided in 15-31-1004.

(19) "Underserved area" means a county in this state in which 14% or more people of all ages are in poverty as determined by the U.S. bureau of the census estimates for the most current year available."

Section 2. Section 15-31-1005, MCA, is amended to read:

"**15-31-1005. Submission of costs -- fee.** (1) Prior to claiming the media production tax credit provided for in 15-31-1007 or the tax credit for postproduction wages provided for in 15-31-1009, a production company or postproduction company must be approved to claim the credit by the department of commerce and shall submit costs to the department of revenue as provided in this section. A taxpayer may not claim a credit provided for in 15-31-1007 or 15-31-1009 unless the costs have been approved as provided in this section. The submission of cost information must be accompanied by a fee as follows:

(a) for a production company with a base investment of less than $350,000, $500;

(b) for a production company with a base investment of $350,000 or more, $1,000;

(c) for a postproduction company claiming the credit provided for in 15-31-1009, $1,000.

(2) (a) A production company wishing to claim or transfer the tax credit for media production provided for in 15-31-1007 shall submit to the department of revenue detailed information on production expenditures and compensation paid in connection with the state-certified production. Production expenditures and compensation paid must be submitted~~: within 60 days of the completion of principal photography or, for a~~

(i) by the last day of the third year following the year in which principal photography ended; or

(ii) for a state-certified production for which expenditures will be claimed for multiple tax years~~:, by the end of the tax year for which the credit will be claimed. If the production company fails to submit the required expenditures and compensation within 60 days, the tax credits may not be claimed until the following tax year~~

(A) annually, if the production company chooses to submit production expenditures and compensation paid within each year; or

(B) by the last day of the third year following the year in which principal photography ended.

(b) The fee provided for in subsection (1) must be paid with each submission of production expenditures and compensation paid filed under subsection (2)(a).

~~(b)~~*(c)* The information submitted by the production company must include:

(i) the certification number of the state-certified production, as provided for in 15-31-1004(4);

(ii) a description of the qualified production activities and the production expenditures, including information that demonstrates a base investment of $350,000 or more or, if 15-31-1004(5) applies, a base investment of $50,000 or more; and

(iii) if compensation is included in the production expenditures, a detailed listing of employee names, social security numbers, Montana wages, state of residence, and whether the employee is an enrolled student.

(3) (a) The department of revenue shall review the costs submitted pursuant to subsection (2) and provide to the department of commerce the amount of the media production tax credit calculated pursuant to 15-31-1007 that may be claimed or transferred and the federal tax identification number of the production company.

(b) (i) Except as provided in subsection (3)(b)(ii), the department of revenue shall approve the media production tax credit if the state-certified production's base investment is $350,000 or more.

(ii) The department of revenue shall approve the credit for a commercial, music video, production for website creation, video game, interactive entertainment, or experimental or low-budget project certified by the department of commerce pursuant to 15-31-1004(5) if the production's base investment is $50,000 or more.

(c) A credit may be approved as provided in this subsection (3) only if principal photography began within 1 year of the date the department of commerce certified the production pursuant to 15-31-1004.

(4) A postproduction company wishing to claim the tax credit for qualified postproduction wages provided for in 15-31-1009 shall submit to the department of revenue a detailed listing of employee names, social security numbers, and Montana wages *by the last day of the third year following the year the postproduction company paid the qualified postproduction wages.*

~~(5) A production company or postproduction company that submits costs pursuant to this section to claim the credit provided for in 15-31-1007 or 15-31-1009 shall submit the production expenditure verification report provided for in 15-31-1006 by the due date provided for in 15-30-2604 without extension.~~

~~(6)~~*(5)* The identity and social security number or federal tax identification number of the employees for which compensation information is submitted pursuant to this section are subject to the provisions of 15-30-2618 and 15-31-511.

~~(7)~~*(6)* The fee provided for in subsection (1) must be deposited in the state special revenue fund. The fee is statutorily appropriated, as provided in 17-7-502, to the department of revenue to administer the provisions of 15-31-1007 through 15-31-1009."

Section 3. Section 15-31-1006, MCA, is amended to read:

"**15-31-1006. Production expenditure verification report.** (1) A production company ~~or postproduction company~~ *with a base investment of more than $350,000* that claims the credit provided for in 15-31-1007 ~~or 15-31-1009~~ shall submit a production expenditure verification report to the department

of revenue as provided in this section. *The report must be submitted with the submission of costs required by 15-31-1005(2)(a).*

(2) The production expenditure verification report must:

(a) be issued by a certified public accountant who is unrelated to the production company ~~or postproduction company~~ and include a certification to that effect;

(b) be performed in accordance with the accounting standards generally accepted in the United States;

(c) be addressed to the person who engaged the accountant with a copy addressed to the production company~~, postproduction company,~~ or person who applies for the credit provided for in 15-31-1007;

(d) include the accountant's name, address, and telephone number;

(e) include the date of completion of the accountant's work; and

(f) contain a statement of acknowledgment by the accountant that the state is relying on the report to issue tax credits.

(3) The contents of the report must include:

(a) verification of the accuracy of the production expenditures and compensation submitted pursuant to 15-31-1005(2) ~~or the wages and compensation submitted pursuant to 15-31-1005(4)~~;

(b) an opinion from the accountant stating that there are no related party transactions or that material related party transactions are properly reported and accounted for, adequately disclosed, and explained in the report; and

(c) a statement that the submission of the production expenditures and compensation presents fairly, in all material aspects, the production expenditures~~, postproduction wages,~~ and compensation expended in Montana pursuant to the provisions of this part.

(4) All costs associated with the report are the obligation of the production company ~~or postproduction company~~."

Section 4. Applicability. [This act] applies to income tax years beginning after December 31, 2023.

Approved May 19, 2023

CHAPTER NO. 643

[SB 38]

AN ACT GENERALLY REVISING STATUTES RELATED TO LEVEL DESIGNATIONS FOR SEXUAL OFFENDERS; PROVIDING DEFINITIONS; REQUIRING ADDITIONAL INFORMATION FROM OFFENDERS REGARDING ELECTRONIC AND COMMUNICATIONS DATA AND PROFESSIONAL LICENSES; REQUIRING NOTICE WHEN AN OFFENDER IS LEAVING THE STATE; PROVIDING OPPORTUNITIES FOR CERTAIN OFFENDERS TO BE REMOVED FROM THE REGISTRY; PROVIDING NOTICE REQUIREMENTS FOR PSYCHOSEXUAL EVALUATIONS; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, AND 46-23-509, MCA.

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

Section 1. Section 46-23-502, MCA, is amended to read:

"**46-23-502. Definitions.** As used in *Title 45, chapter 5, part 3 and parts 5 through 7,* 46-18-255*,* and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

~~(2)~~*(3)* "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~*(4)* "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~*(5)* "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~*(6)* "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~*(7)* "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~*(8)* (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~*(9)* "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~*(10) (a)* "Sexual offense" means*: any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:*

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601(3), 45-5-602(3), 45-5-603(1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c) and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b), (3), and (4) Prostitution;

(x) 45-5-602(3) and (4), Promoting prostitution;

(xi) 45-5-603, Aggravated promotion of prostitution;

(xii) 45-5-622(2)(b)(ii), Endangering welfare of children;

(xiii) 45-5-625, Sexual abuse of children;

(xiv) 45-5-627(1)(a), Ritual abuse of minor;

(xv) 45-5-704, Sexual servitude;

(xvi) 45-5-705, Patronizing victim of sexual servitude; or

~~(b)~~*(xvii)* any violation of a law of another state, a tribal government, ~~or~~ the federal government*, or the military or a foreign entity* that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~*(10)(a)(i) through (10)(a)(xvi)* or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) This term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~*(11)* "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~*(12)* "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~*(13)* "Transient" means an offender who has no residence.

~~(13)~~*(14)* "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of*:*

(i) 45-5-102, *Deliberate homicide;*

(ii) 45-5-103, *Mitigated deliberate homicide;*

(iii) 45-5-202, *Aggravated assault;*

(iv) 45-5-206 (third or subsequent offense), *Partner or family member assault;*

(v) 45-5-210(1)(b), (1)(c), or (1)(d), *Assault on a peace officer or judicial officer;*

(vi) 45-5-212, *Assault on a minor;*

(vii) 45-5-213, *Assault with weapon;*

(viii) 45-5-215, *Strangulation of partner or family member;*

(ix) 45-5-302 (if the victim is not a minor), *Kidnapping;*

(x) 45-5-303 (if the victim is not a minor), *Aggravated kidnapping;*

(xi) 45-5-401, *Robbery;*

(xii) 45-6-103, *Arson;* or

(xiii) 45-9-132*, Operation of unlawful clandestine laboratory*; or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government*, or the military or a foreign entity* reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ *(14)(a)*."

Section 2. Section 46-23-504, MCA, is amended to read:

"**46-23-504. Persons required to register -- procedure.** (1) Except as provided in 41-5-1513 *and 45-5-503(5)*, a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 3 business days of entering a county of this state for the purpose of residing or setting up a temporary residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection ~~(1)(a), (1)(c), or (1)(d)~~ *(1)* must be with the appropriate registration agency. If an offender registers with a police department, the department shall notify the sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through ~~(3)(h)~~ *(3)(k)* and any other information required by the department of justice. The registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, photograph the offender, and obtain a DNA sample from the offender. Within 3 days, the registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The registration agency shall send the DNA sample to the department of justice for analysis and entry of the DNA record into the DNA identification index. The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year. The information collected from the offender at the time of registration must include:

(a) the name of the offender and any aliases used by the offender;

(b) the offender's social security number;

(c) the residence information required by subsection (4);

(d) the name and address of any business or other place where the offender is or will be an employee;

(e) the name and address of any school where the offender will be a student;

(f) the offender's driver's license number;

(g) the description*, registration number or identifier,* and license number of ~~any~~ *all* motor ~~vehicle~~ *vehicles* owned or operated by the offender; and

(h) ~~all of the offender's e-mail addresses and social media screen names.~~ *The following information related to the offender's internet activity:*

(i) all e-mail addresses used by the offender;

(ii) all instant message addresses and identifiers;

(iii) all other designations or monikers used for self-identification in internet communications or postings; and

(iv) all designations used by the offender for the purpose of routing or self-identification in internet communications, postings, or social media accounts;

(i) any passports held or used by the offender. The department or its designee shall make a photocopy of the passports.

(j) all telephone numbers and any other designations used by the offender for the purposes of routing or self-identification in telephonic communications, including but not limited to:

(i) all cellular telephone numbers;

(ii) all landline telephone numbers; and

(iii) all voice over internet protocol telephone numbers; and

(k) all professional licenses, including the licensing number, licensing agency, and any other identifying information about a professional license issued to the offender that authorizes the offender to engage in an occupation or carry out a trade or business.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency shall require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through ~~(3)(h)~~ *(3)(k)*. The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509;

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(iii) each year to a violent offender or an offender designated as a level 1 offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(c) The form must require the offender's notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender and collect a DNA sample if one has not already been collected. The registration agency shall send the DNA sample to the department of justice for analysis and entry into the DNA identification index.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 3. Section 46-23-505, MCA, is amended to read:

"**46-23-505. Notice of change of name or residence or student, employment, or transient status -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of name or residence or a change in student, employment, or transient status, the offender shall within 3 business days of the change appear in person and give notification of the change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the registration agency for the county or municipality from which the offender is moving. The registration agency shall require the offender to appear before the registration agency for a new photograph every year.

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality.

(4) If an offender who is required to register under this part is physically absent from the offender's county of residence for more than 10 consecutive days, the offender shall register in the county where the offender is physically located on the 11th day even if the offender claims to maintain a residence, as defined in 46-23-502, in that county. The offender shall register again in the offender's county of residence when the offender returns to that county.

(5) If an offender is required to register under subsection (4), the offender shall register in any subsequent county where the offender is present for more than 24 hours until the offender registers again in the offender's county of residence.

(6) In the event an offender will be absent from this state for more than 7 days, the offender shall provide notice with the information required under this section in person to the registering agency no later than 3 days before their scheduled travel. The registering agency shall forward the information to the department of justice, which shall then notify the provided jurisdiction."

Section 4. Section 46-23-506, MCA, is amended to read:

"**46-23-506. ~~Duration~~ *Duty* of registration -- *duration, frequency, reduction, and relief.*** (1) A sexual offender required to register under this part shall register for the remainder of the *sexual* offender's life, except as provided in subsection (3) or during a period of time during which the *sexual* offender is in prison.

(2) (a) A violent offender required to register under this part shall register for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing and after registering for 10 years, is automatically relieved of the duty to register unless convicted as provided in subsection (2)(b).

(b) If convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, the *violent* offender shall register for the remainder of the *violent* offender's life unless relieved of the duty to register as provided in subsection ~~(3)~~ *(2)(e)*.

(c) When ~~an~~ *a violent* offender is relieved of the duty to register under subsection (2)(a), the department of justice shall remove the *violent* offender from the registry.

(d) Petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.

(e) Except as provided in subsection (5), at any time after 10 years of registration for a violent offender registered as provided in subsection (2)(b), a violent offender may petition the sentencing court or the district court for the judicial district in which the violent offender resides for an order relieving the violent offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the violent offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition on finding that:

(i) the violent offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) Except as provided in subsection ~~(5)~~ *(7)*, at any time after 10 years of registration for ~~a violent offender registered as provided in subsection (2)(b) or~~ a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition ~~upon~~ *on* finding that:

(a) the offender has ~~remained a law-abiding citizen~~ *maintained a clean record during their period of registration*; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) A level 3 sexual offender may have their period of registration reduced to 25 years if the sexual offender was adjudicated delinquent of an offense as a juvenile that required level 3 sexual offender registration and the sexual offender has maintained a clean record for 25 consecutive years.

(5) For the purposes of this section, the sexual offender has a clean record if, during the period of time in which the sexual offender was required to register as a sexual offender:

(a) the sexual offender was not convicted of any felony offense;

(b) the sexual offender was not convicted of any sexual offense;

(c) the sexual offender successfully completed, without revocation, any period of supervised release, probation, or parole; and

(d) the sexual offender has successfully completed an appropriate sexual offender treatment program.

~~(4)~~*(6)* The offender may move that all or part of the proceedings in a hearing under ~~subsection~~ *subsections (2)(e) and* (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under ~~subsection~~ *subsections (2)(e) and* (3) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

~~(5)~~*(7)* Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual or violent offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 5. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

(ii) if ~~an~~ *a sexual* offender was given a level 1 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; ~~and~~

(D) the offenses for which the offender is required to register under this part;

(E) the offender's employer address; and

(F) the offender's postsecondary school address.

(iii) if ~~an~~ *a sexual* offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall and the registration agency may disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any motor vehicle owned or operated by the offender;

(F) the offenses for which the offender is required to register under this part; ~~and~~

(G) the offender's employer address;

(H) the offender's postsecondary school address; and

~~(G)~~*(I)* any conditions imposed by the court upon the offender for the safety of the public; and

(iv) if ~~an~~ *a sexual* offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(iii). The notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a registration agency without the permission of the victim.

(3) Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 6. Section 46-23-509, MCA, is amended to read:

"**46-23-509. Psychosexual evaluations and sexual offender designations.** (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(5) If an offense is covered by ~~46-23-502(9)(b)~~ *46-23-502(10)(q)*, the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government. All offenders convicted in another state or by the federal government who are not currently under the supervision of the department or the youth court and were not given a risk level designation after conviction shall provide to the department of justice all prior risk assessments and psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of petitioning a district court to assign a risk level designation.

(6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section.

(7) Upon obtaining information that indicates that a sexual offender who is required to register under this part does not have a level 1, 2, or 3 designation, *the offender,* the attorney general, the county attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for the county in which the offender resides may, at any time, petition the district court that sentenced the offender for a sexual offense or the district court for the judicial district in which the offender resides to designate the offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report at the petitioner's expense*, or order that the results of all prior psychosexual evaluations be provided to all parties*. The court shall provide the offender with an opportunity for a hearing prior to designating the offender. The petitioner shall provide the offender*, the attorney*

general, and the county attorney that prosecuted the offender with notice of the petition and notice of the hearing. *As provided in 46-23-506(2)(d), petitions for relief from registration under this part must be filed in the appropriate Montana district court. Orders or other documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana.*"

Section 7. Coordination instruction. If both House Bill No. 112 and [this act] are passed and approved and both contain a section that amends 46-23-502, then the sections that amend 46-23-502 are void and 46-23-502 must be amended as follows:

"46-23-502. Definitions. As used in *Title 45, chapter 5, part 3 and parts 5 through 7,* 46-18-255*,* and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or under the laws of any foreign country when the United States department of state, in its country reports on human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction was obtained.

~~(2)~~*(3)* "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

~~(3)~~*(4)* "Municipality" means an entity that has incorporated as a city or town.

~~(4)~~*(5)* "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(5)~~*(6)* "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

~~(6)~~*(7)* "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

~~(7)~~*(8)* (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(8)~~*(9)* "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

~~(9)~~*(10)(a)* "Sexual offense" means*: any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:*

~~(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim),~~

~~45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502 (3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503 (1), (3), or (4), 45-5-504 (2)(c), 45-5-504 (3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508, 45-5-601 (3), 45-5-602 (3), 45-5-603 (1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705; or~~

(i) 45-5-301, Unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, Kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, Aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c) and (3), Sexual assault;

(v) 45-5-503, Sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), Indecent exposure;

(vii) 45-5-507, Incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, Aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), Prostitution;

(x) 45-5-622(2)(b)(ii), Endangering the welfare of children;

(xi) 45-5-625, Sexual abuse of children;

(xii) 45-5-627(1)(a), Ritual abuse of a minor;

(xiii) 45-5-705, Patronizing a victim of sex trafficking;

(xiv) 45-5-706, Aggravated sex trafficking;

(xv) [section 19 of House Bill No. 112], Child sex trafficking; or

~~(b)~~*(xvi)* any violation of a law of another state, a tribal government, ~~or~~ the federal government*, or the military or a foreign entity* that is reasonably equivalent to a violation listed in subsection ~~(9)(a)~~*(10)(a)(i) through (10)(a)(xv)* or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

~~(10)~~*(11)* "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(11)~~*(12)* "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

~~(12)~~*(13)* "Transient" means an offender who has no residence.

~~(13)~~*(14)* "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of*;*

(i) 45-5-102, *Deliberate homicide;*

(ii) 45-5-103, *Mitigated deliberate homicide;*

(iii) 45-5-202, *Aggravated assault;*

(iv) 45-5-206 (third or subsequent offense), *Partner or family member assault;*

(v) 45-5-210(1)(b), (1)(c), or (1)(d), *Assault on a peace officer or judicial officer;*

(vi) 45-5-212, *Assault on a minor;*

(vii) 45-5-213, *Assault with a weapon;*

(viii) 45-5-215, *Strangulation of a partner or family member;*

(ix) 45-5-302 (if the victim is not a minor), *Kidnapping;*

(x) 45-5-303 (if the victim is not a minor), *Aggravated kidnapping;*

(xi) 45-5-401, *Robbery;*

(xii) 45-6-103, *Arson;* or

(xiii) 45-9-132; *Operation of unlawful clandestine laboratory;* or

(b) any violation of a law of another state, a tribal government, ~~or~~ the federal government*, or the military or a foreign entity* reasonably equivalent to a violation listed in subsection ~~(13)(a)~~ *(14)(a)*."

Section 8. Coordination instruction. (1) If House Bill No. 112, House Bill No. 525, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads:

"(iv) 45-5-502(2)(c), (3), and (4), Sexual assault;".

(2) If House Bill No. 112 is not passed and approved and House Bill No. 525 and [this act] are passed and approved, then the section in House Bill No. 525 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that 46-23-502(10)(a)(iv) reads:

"(iv) 45-5-502(1), (2)(c), (3), and (4), Sexual assault;".

Section 9. Coordination instruction. (1) If House Bill No. 112, Senate Bill No. 345, and [this act] are passed and approved and all three contain a section that amends 46-23-502, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 7 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense:

45-8-218, Deviate sexual conduct.

(2) If House Bill No. 112 is not passed and approved and Senate Bill No. 345 and [this act] are passed and approved, then the section in Senate Bill No. 345 that amends 46-23-502 is void and [section 1 of this act], amending 46-23-502, must be further amended so that the definition of "sexual offense" in 46-23-502(10)(a) includes the following offense:

45-8-218, Deviate sexual conduct.

Approved May 19, 2023

CHAPTER NO. 644

[SB 46]

AN ACT REVISING PROPERTY TAX LAWS TO REMOVE NEW INDUSTRIAL PROPERTY FROM CLASS FIVE; AMENDING SECTIONS 15-6-135, 15-24-1401, AND 20-9-407, MCA; AND REPEALING SECTION 15-6-192, MCA.

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

Section 1. Section 15-6-135, MCA, is amended to read:

"**15-6-135. Class five property -- description -- taxable percentage -- exemption.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control and carbon capture equipment as defined in this section;

~~(c) new industrial property as defined in this section;~~

~~(d)~~*(c)* any personal or real property used primarily in the production of ethanol-blended gasoline during construction and for the first 3 years of its operation;

~~(e)~~*(d)* all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

~~(f)~~*(e)* machinery and equipment used in electrolytic reduction facilities; *and*

~~(g)~~*(f)* all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control and carbon capture equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment certified as provided in subsections (2)(b) and (2)(c) and designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. This includes machinery, devices, or equipment used to capture carbon dioxide or other greenhouse gases. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control and carbon capture equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control and carbon capture equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control and carbon capture equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) To qualify for the exemption under subsection ~~(5)(b)(i)~~ *(3)(b)(i)*, the air and water pollution control and carbon capture equipment must be placed into service after January 1, 2014, for the purposes of environmental benefit or to comply with state or federal pollution control regulations. If the air or water pollution control and carbon capture equipment enhances the performance of existing air and water pollution control and carbon capture equipment, only the market value of the enhancement is subject to the exemption under subsection ~~(5)(b)(i)~~ *(3)(b)(i)*.

(e) Except as provided in subsection (2)(d), equipment that does not qualify for the exemption under subsection ~~(5)(b)(i)~~ *(3)(b)(i)* includes but is not limited

to equipment placed into service to maintain, replace, or repair equipment installed on or before January 1, 2014.

(f) A person may appeal the certification, classification, and valuation of the property to the Montana tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

~~(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.~~

~~(b) New industrial property does not include:~~

~~(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~

~~(ii) a plant that will create adverse impact on existing state, county, or municipal services; or~~

~~(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.~~

~~(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.~~

~~(b) New industry includes only those industries that:~~

~~(i) manufacture, mill, mine, produce, process, or fabricate materials;~~

~~(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;~~

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

~~(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or~~

~~(v) earn 50% or more of their annual gross income from out-of-state sales.~~

~~(5)~~*(3)* (a) Except as provided in subsection ~~(5)(b)~~ *(3)(b)*, class five property is taxed at 3% of its market value.

(b) (i) Air and water pollution control and carbon capture equipment placed in service after January 1, 2014, and that satisfies the criteria in subsection (2)(d) is exempt from taxation.

(ii) (A) Except as provided in subsection ~~(5)(b)(ii)(B)~~ *(3)(b)(ii)(B)*, fiber optic or coaxial cable, as defined in 15-6-156, installed and placed in service on or after July 1, 2021, is exempt from taxation for a period of 5 years starting from the date the fiber optic or coaxial cable was placed in service, after which the property exemption is phased out at a rate of 20% a year, with the property being assessed at 100% of its taxable value after a 10-year period. In order to maintain the exemption, the owner of fiber optic or coaxial cable shall reinvest the tax savings from the exemption by installing and placing in service new fiber optic or coaxial cable in Montana within 2 years from the date the owner first claimed the exemption provided for in this subsection ~~(5)(b)(ii)~~ *(3)(b)(ii)* without charging those costs to the consumer. The cost of installing or placing into service fiber optic or coaxial cable with the reinvested tax savings without

charging those costs to the consumer must be equal to or greater than the value of the tax savings received from the tax incentive.

(B) Fiber optic or coaxial cable installed using federal funds received pursuant to section 9901 of the American Rescue Plan Act is not eligible for exemption from taxation under this section.

(C) An entity that claims a tax exemption under this subsection ~~(5)(b)(ii)~~ *(3)(b)(ii)* shall maintain adequate books and records demonstrating the investment the owner made when installing and placing in service fiber optic or coaxial cable in Montana. The property owners shall make those records available to the department for inspection upon request.

~~(6)~~*(4)* (a) The property taxes exempted from taxation by subsection ~~(5)(b)(ii)~~ *(3)(b)(ii)* are subject to termination or recapture if the department determines that the owner failed to install and place in service new coaxial or fiber cable in Montana as provided in subsection ~~(5)(b)(ii)~~ *(3)(b)(ii)* or otherwise violates the provisions of this section.

(b) Upon notice from the department that the owner's exemption has terminated, any local governing body may recapture taxes previously exempted in that jurisdiction, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any tax year in which an exemption under the provisions of subsection ~~(5)(b)(ii)~~ *(3)(b)(ii)* was improper. Any recapture must occur within 10 years after the end of the calendar year in which the exemption was first claimed.

(c) The recapture of abated taxes may be cancelled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

Section 2. Section 15-24-1401, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

(h) operates a green hydrogen facility, green hydrogen pipeline, or green hydrogen storage system as defined in 15-6-163.

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

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

Section 3. Section 20-9-407, MCA, is amended to read:

"**20-9-407. Industrial facility agreement for bond issue in excess of maximum.** ~~(1) In a school district within which a new major industrial facility that seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the limitation prescribed in 20-9-406. Under an agreement, the school district may, with the approval of the voters, issue bonds that exceed the limitation prescribed in this section by a maximum of 100% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation must be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value must be printed on each ballot used to vote on a bond issue proposed under this section.~~

~~(2)~~*(1)* Pursuant to ~~the~~ *an* agreement between ~~the~~ *a* new major industrial facility and ~~the~~ *a* school district and as a precondition to qualifying as class five property *under 15-6-135(1)(c) before the amendment of 15-6-135 in [this act]*, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, as much of the principal and interest on the bonds provided for under *former subsection (1) of* this section *before the amendment in [this act]* as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in *former subsection (1) of* this section *before the amendment in [this act]*, the new major industrial facility is entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit must as a total amount be equal to the amount that the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

~~(3)~~*(2)* A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

Section 4. Repealer. The following section of the Montana Code Annotated is repealed:

15-6-192. Application for classification as new industrial property.

Approved May 19, 2023

CHAPTER NO. 645

[SB 59]

AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS; REVISING LAWS RELATING TO PUBLIC CONVENIENCE AND NECESSITY; PROVIDING THAT PUBLIC CONVENIENCE AND NECESSITY CONSIDERATIONS ARE LIMITED TO CONSIDERATION OF THE ALCOHOLIC BEVERAGE; REVISING LAWS RELATED TO DEPARTMENT REQUESTS FOR ADDITIONAL LICENSING INFORMATION; REVISING LAWS RELATED TO TABLE WINE; REVISING LAWS RELATING TO RESORT AREA LICENSES; REVISING LAWS RELATING TO SPECIAL PERMITS; AND AMENDING SECTIONS 16-3-103, 16-4-203, 16-4-212, 16-4-213, 16-4-207, AND 16-4-301, MCA.

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

Section 1. Section 16-3-103, MCA, is amended to read:

"**16-3-103. Unlawful sales solicitation or advertising -- exceptions.** (1) A person within the state may not:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless permitted to do so under rules that are promulgated by the department to govern the activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with the rules.

(2) This section does not apply to:

(a) the department, any act of the department, any agency liquor store;

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of employment as the agent, operator, or employee;

(c) the sale and serving of beer *and table wine* in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to 16-4-111 or 16-4-204; or

(d) the sale of alcohol at a sporting event conducted at a Montana university as provided in 16-4-112."

Section 2. Section 16-4-203, MCA, is amended to read:

"**16-4-203. Determination of public convenience and necessity.** (1) An original license issued pursuant to 16-4-104, 16-4-201, 16-4-208, or 16-4-213 or the transfer of *ownership or* location of ~~an on-premises retail license~~ *a license issued pursuant to 16-4-104, 16-4-201, 16-4-208, or 16-4-213* may be approved if the department does not receive the minimum number of protests required for a public convenience and necessity determination pursuant to 16-4-207, in which case the application must be regarded as a prima facie showing of public convenience and necessity and no further determination of public convenience and necessity is allowed.

(2) (a) If the department receives at least the minimum number of protests required for a public convenience and necessity determination, as provided in

16-4-207, an application must be approved when evidence indicates that the issuance of an original license or transfer of location will materially promote the public's ability to engage in the licensed activity.

(b) The issuance of an original license or a transfer of location will materially promote the public's ability to engage in the licensed activity if:

(i) the applicant's history and experience demonstrate the capacity to operate the proposed license in a lawful manner;

(ii) the approval of the application for the premises at the proposed location is consistent with the public's demand or probable demand for the licensed activity that presently exists or is reasonably expected to exist within the next 5 years in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located;

(iii) the approval of the application for the premises at the proposed location contributes to the public's ability to participate in the licensed activity throughout the quota area where the proposed premises is located and quota areas adjacent to the quota area where the proposed premises is located;

(iv) the approval of the application for the premises at the proposed location is consistent with adopted or pending planning, annexation, and zoning ordinances of local governments that confer or will confer jurisdiction over business and developments such as the proposed license in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located.

(3) Protests are limited to the operation of the alcoholic beverage license only. Protests related to gambling or other matters will not be considered by the department.

~~(3)~~*(4)* When determining whether or not an application is justified by public convenience and necessity, the department may:

(a) receive evidence at the public hearing specified in 16-4-207 only from the applicant, any protestors whose protests the department has accepted pursuant to 16-4-207, and any other person summoned or called by either a protestor or applicant;

(b) find that the application is justified by public convenience and necessity if the applicant has provided substantial credible evidence as provided for in this subsection ~~(3)~~ *(4)* that shows that the department's approval of the application will materially promote the public's ability to engage in the licensed activity. The substantial credible evidence required must include a consideration of each of the components of materially promoting the public's ability to engage in the licensed activity as provided in subsection (2)(b).

~~(4)~~*(5)* For the purposes of this section, the following definitions apply:

(a) "Confer or will confer jurisdiction" means the power or authority that a local government or an appointed subsidiary of a local government has or may obtain within 1 year from the date of the hearing to consider and adopt planning, annexation, or zoning ordinances.

(b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in a business licensed to sell alcoholic beverages at retail for on-premises consumption.

(c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local government or an appointed subsidiary of a local government that were publicly considered within the year preceding the date of the hearing or are presently being considered."

Section 3. Section 16-4-207, MCA, is amended to read:

"**16-4-207. Notice of application -- investigation -- publication -- protest.** (1) (a) When an application has been filed with the department for a license to sell alcoholic beverages at retail *issued pursuant to 16-4-104,*

16-4-201, 16-4-208, or 16-4-213 or to transfer the *ownership or* location of a ~~retail~~ license *issued pursuant to 16-4-104, 16-4-201, 16-4-208, or 16-4-213*, the department shall review the application for completeness and, based ~~upon~~ *on* review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make ~~one request~~ *requests* for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. When the application is complete, the department of justice shall investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by residents of the county from which the application comes, residents of adjoining Montana counties, or residents of adjoining counties in another state if the criteria in subsection (4)(d) are met. Protests must be mailed to the department within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks.

(b) (i) Notice may be substantially in the following form for an applicant without a premises:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the..... day of....., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used within the (quota area). Residents of..... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to....., department of revenue, Helena, Montana, on or before the..... day of....., 20.....

Dated.....

Signed

.....

(ii) Notice may be substantially in the following form for a premises only:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the..... day of....., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). Residents of..... counties may protest against the approval of the premises location only as notice of protest for the applicant has already occurred. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to....., department of revenue, Helena, Montana, on or before the..... day of....., 20.....

Dated.....

Signed

.....

(iii) Notice may be substantially in the following form for an applicant and premises applied for at the same time or if the location of the license will be floated out of the quota area it was initially noticed in:

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

Notice is given that on the..... day of....., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). Residents of..... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to....., department of revenue, Helena, Montana, on or before the..... day of....., 20.....

Dated.....

Signed

.....

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice. There may be two charges if the applicant applies for licensure prior to applying for a premises under 16-4-417.

(3) (a) If the department receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to

16-4-201(1), (2), and (9) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses.

(d) A resident of a county in another state that adjoins the county in Montana from which an application comes may protest an application only if the county or state of residence of the person has certified to the department that a similarly situated Montana resident would be able to make formal protest of an alcoholic beverage license application in that state or county. The department may, by rule, establish how the certification is to be made."

Section 4. Section 16-4-212, MCA, is amended to read:

"**16-4-212. Resort area determination.** (1) To obtain a resort area designation, the resort area developer or landowner must submit an application with a plat setting forth the resort area boundaries and designating the ownership of the lands within the resort area. The plat must show the location and general design of the buildings and other improvements existing or to be built in the resort area. A master plan for the development of the resort area may be filed by the resort area developer in satisfaction of this section.

(2) (a) In addition to the other requirements of this code, at the time of application, a resort area ~~must~~:

(i) *may* not be located within the boundaries of ~~a~~ *an incorporated city or town* quota area as described in 16-4-201*(1) or (2), except that if the resort area is located in a county having a consolidated city-county unit of local government, the resort area must be more than 5 miles from the historical corporate limits of the city or town that existed immediately before the abandonment or consolidation into the consolidated city-county unit of local government*;

(ii) *must* have a current actual valuation of resort or recreational facilities, including land and improvements, of not less than ~~$1~~ *$10* million, at least ~~half~~ *$5 million* of which valuation must be for a structure or structures within the resort area;

(iii) *must* be under the sole ownership or control of one person or entity;

(iv) *must* contain a minimum of ~~50~~ *125* acres of land; and

(v) *must* provide details of the recreational facilities that are or will be on the grounds of the resort that warrant the resort designation being granted. These recreational facilities must be completed prior to licenses being issued in 16-4-213.

(b) *A resort area's current actual valuation under subsection (2)(a)(ii) may be determined by using an independent appraisal or the department's tax appraisals of the property.*

(c) For the purposes of this ~~section~~ *subsection (2)*, "control" means land or improvements that are owned or that are held under contract, lease, option, or permit.

(3) Within 15 business days after the application is filed, the department shall schedule a public hearing to be held in the proposed area to determine whether the facility proposed by the resort area developer or landowner is a resort area. At least 30 days prior to the date of the hearing, the department shall publish notice of the hearing in a newspaper published in the county or counties in which the resort area is located, once a week for 4 consecutive weeks. The notice must include a description of the proposed resort area. The resort area developer or landowner shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publication.

(4) A person may present, in person or in writing, a statement to the department at the hearing in opposition to or in support of the application.

(5) Within 30 days after the hearing, the department shall approve or deny the application. If the application is denied, the applicant may request a review

of the decision of the department pursuant to the Montana Administrative Procedure Act.

(6) Once a resort area has been approved by the department, the boundaries of a resort area may not be changed without a new application.

(7) (a) Except as provided in subsection (7)(b), an approved resort area designation lapses if no resort all-beverages licenses are issued pursuant to 16-4-213 within 5 years of the department's approval of the resort area or if the resort area applicant cannot demonstrate substantial progress toward completion of the improvements and outdoor recreational facilities described in the application.

(b) A resort area designation that received department approval prior to January 1, 2024, lapses if no resort all-beverages licenses are issued pursuant to 16-4-213 by January 1, 2029.

(c) A developer or landowner of a lapsed resort area may reapply to the department to obtain a new resort area designation."

Section 5. Section 16-4-213, MCA, is amended to read:

"**16-4-213. Resort retail all-beverages licenses.** (1) After a resort area has been approved, applications may be filed with the department for the issuance of resort retail all-beverages licenses within the resort area.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), the department may issue one resort retail all-beverages license for the first 100 accommodation units and an additional license for each additional 50 accommodation units within an approved resort area as long as the recreational facilities under 16-4-212 have also been completed.

(b) *(i)* For a resort area with a perimeter containing at least ~~1,000~~ *500* contiguous acres that has a current actual valuation of completed recreational facilities, including land and improvements, of not less than ~~$30~~ *$20* million, the department may issue up to 10 resort retail all-beverages licenses regardless of the number of accommodation units.

(ii) For a resort area with a perimeter containing at least 2,000 contiguous acres that has a current actual valuation of completed recreational facilities, including land and improvements, of not less than $40 million, the department may issue up to 25 resort retail all-beverages licenses regardless of the number of accommodation units.

(c) A resort area designation application to the department that received approval prior to January 1, 1999, is entitled to the issuance of one resort retail all-beverages license for a $20,000 license fee. Any additional resort retail all-beverages licenses issued to a resort area under this subsection (2)(c) must meet the accommodation unit requirement in subsection (2)(a) of this section and pay the license fee and renewal fees as provided in 16-4-501.

(d) (i) For purposes of this code, "accommodation unit" means a unit that is available for short-term guest rental and includes:

(A) a single-family home;

(B) a single unit of an apartment, condominium, or multiplex;

(C) a single room of a hotel or motel; or

(D) similar living space. A space under this subsection (2)(d)(i)(D) must be distinctly separated from other living spaces within the building and have its own sleeping, bath, and toilet facilities.

(ii) In order to qualify toward the required total for the purposes of subsection (2)(a), accommodation units may not be located within the boundaries of a quota area as provided in 16-4-201(1) or (2) as of the date of submission for a resort retail all-beverages license.

(3) Regardless of how many resort area all-beverages licenses are issued in a resort area, no more than 20 gambling machine permits may be issued for the resort area.

(4) A resort retail all-beverages license within the resort area:

(a) is subject to all other requirements of an all-beverages license in this code, except:

(i) for the purposes of premises suitability under 16-3-311, a licensed retailer may use a part of the building as a licensed premises for the consumption of alcoholic beverages on the premises. The premises must be separated from the rest of the building by permanent walls but may have inside access to the rest of the building at all times even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which alcoholic beverages are served. If the premises are located in a portion of a building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access;

(ii) the interior portion of the licensed premises must be a continuous area that is under the control of the licensee and not interrupted by any area in which the licensee does not have adequate control, and includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in order to allow patrons to access other tenant businesses or private dwellings in the same building, including but not limited to entryways, hallways, stairwells, and elevators; and

(iii) the premises may include one or more exterior patios or decks as long as sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and impedes foot traffic.

(b) is not subject to the quota limitations set forth in 16-4-201; and

(c) is transferable to another location within the boundaries of the resort area or to another owner to be used at a location within the boundaries of the resort area.

(5) For licenses issued under this section, a licensee may apply to the department to allow for the delivery of alcohol to guests of accommodation units and the prestocking of alcoholic beverages in accommodation units within the designated resort area property as long as the purchaser's age is verified. The application fee is $100.

(6) Employees of the resort licensee who sell, serve, or deliver alcohol must be trained as provided in 16-4-1005.

(7) A resort retail all-beverages licensee whose premises is located outside of a quota area as defined in 16-4-201(1) or (2) may enter into a maximum of one concession agreement per license with an unlicensed entity to serve alcoholic beverages. Except for 16-4-418(1), the provisions of 16-4-418 apply.

(8) If a resort area has two or more resort retail all-beverage licenses or retail all-beverages licenses within the boundaries of the resort, the licensees may also apply to use a resort alternate alcoholic beverage storage facility to be located within the resort area. The application fee is $100. The alternate storage facility will be considered part of each licensee's existing licensed premises, though it does not need to be contiguous to qualify for approval. The licensees using the alternate storage facility must meet all requirements to ensure the secure storage of alcoholic beverages and prevent on-site consumption of alcoholic beverages. Alcoholic beverages in sealed containers belonging to multiple licensees within the resort area may be stored in the

same storage facility. A resort retail licensee or retail licensee who is approved to use the alternate storage facility may accept delivery of alcoholic beverages at the alternate storage facility and may transfer alcoholic beverages to another licensee approved to use the alternate storage facility. Any transfer of alcoholic beverages between approved licensees must be properly accounted for. Approval to use the alternate storage facility must be documented on the face of each license within the resort area that applies to use the alternate storage facility.

(9) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in original packaging, prepared servings, or growlers."

Section 6. Section 16-4-301, MCA, is amended to read:

"**16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine -- application and issuance.** (1) (a) *The following organizations or institutions that conduct a special event may receive up to twelve special permits a year to sell beer and table wine to the patrons of the special event:*

(i) ~~An~~ *an* organization or institution that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended~~.~~*;*

(ii) an organization or institution that is organized and operated to raise funds for a needy person*;* or

(iii) an organization or institution that is an accredited Montana postsecondary school ~~and that conducts a special event may receive a special permit to sell beer and table wine to the patrons of that special event. An organization may receive up to three special permits a year~~.

(b) A civic league or organization that has a tax-exempt designation under section 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(4), as amended, or an organization authorized by an accredited Montana postsecondary school to engage in fundraising activities for intercollegiate athletics that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, may receive up to 12 special permits a year to sell beer and table wine. For purposes of fundraising activities for intercollegiate athletics, only one organization for each Montana postsecondary school may be authorized to apply for and receive special permits under this section. All net earnings from the sale of beer and table wine must be contributed to the state of Montana or a political subdivision of the state or must be devoted to purposes required of entities under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended.

(c) An association or corporation engaged in professional sporting contests or junior hockey contests may receive one special permit to sell beer and table wine ~~covering the entire~~ *covering the entire* season of play if:

(i) the association or corporation is sanctioned by a sports organization that regulates the specific sport;

(ii) the season of play of the sport ~~is~~ *is* specified in advance;

(iii) an admission fee to the contests is charged; ~~and~~ *and*

(iv) the contest events are held in facilities that provide seating for at least 1,000 patrons.

(d) A chamber of commerce or business league that has a tax-exempt designation under section 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(6), as amended, may receive up to 12 special permits a year to sell beer and table wine. A chamber of commerce may not use one of its special permits for an event conducted by a business league, and a business league may not use one of its permits for an event conducted by a chamber of commerce. The chamber of commerce or business league receiving a special permit shall obtain liquor liability insurance for any event it conducts.

(e) A winery located in the state and licensed pursuant to 16-4-107 may receive up to twelve special permits during a calendar year to provide wine that was produced at the winery's licensed premises.

~~(e)~~*(f)* The beer and wine sold under this subsection (1) must be consumed at the time when and within the enclosure where the special event, activity, or sporting contest is held.

~~(f)~~*(g)* An application for a special permit must be presented ~~3~~ *5 business* days in advance, but the department may, for good cause, waive the ~~3-day~~ *5-day* requirement. The application must describe the location of the enclosure where the special event, activity, or sporting contest is to be held, the nature of the special event, activity, or sporting contest, and the period during which it is contemplated that the special event, activity, or sporting contest will be held. An application for a permit for professional sporting contests or junior hockey contests under subsection (1)(c) must provide the ~~inclusive~~ *inclusive* dates of the season of play ~~for the sporting contest~~ *for the sporting contest*. The application must be accompanied by the amount of the permit fee and a written statement of approval of the premises where the special event, activity, or sporting contest is to be held issued by the local law enforcement agency that has jurisdiction over the premises.

~~(g)~~*(h)* A special permit issued under this subsection (1) for the purpose of selling and serving beer *and table wine* at a special event, activity, or sporting contest conducted on the premises of a county fairground or public sports arena authorizes the permitholder to sell and serve beer *and table wine* in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

~~(h)~~*(i)* For the purposes of this subsection (1), a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization otherwise licensed under this code is an organization that may receive special permits for three special events a year~~, as described in subsection (1)(a),~~ to sell beer and table wine. All net proceeds must go to the post or lodge acquiring the special permit.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code may receive, without notice or hearing as provided in 16-4-207, a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at the post or lodge to members and their guests only, to be consumed within the hall or building of the post or lodge.

(b) The application of a nationally chartered veterans' organization or lodge of a recognized national fraternal organization must describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit may be issued for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 special permits to any post or lodge during a calendar year."

Approved May 19, 2023

CHAPTER NO. 646

[SB 47]

AN ACT REVISING COMMERCIAL DRIVER'S LICENSE LAW TO COMPLY WITH FEDERAL REQUIREMENTS; REQUIRING THE DEPARTMENT OF JUSTICE TO QUERY THE ENTRY-LEVEL DRIVER TRAINING

PROVIDER REGISTRY AND THE COMMERCIAL DRUG AND ALCOHOL CLEARINGHOUSE UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT TO TAKE CERTAIN ACTIONS AS A RESULT OF REQUIRED QUERIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 61-5-110 AND 61-14-202, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Entry-level driver training -- requirements -- responsibilities of department of transportation. (1) The department of transportation:

(a) shall develop and implement an entry-level driver training program, including theory and behind-the-wheel training, that complies with federal requirements for class A and class B commercial driver's licenses, excluding endorsements;

(b) shall make available to the public the entry-level driver training program provided for in subsection (1)(a);

(c) may utilize various formats of entry-level driver trainings, including in-person training and asynchronous or synchronous virtual training; and

(d) may coordinate with other state agencies or organizations to develop and implement entry-level driver training.

(2) An entry-level driver training program developed by the department of transportation must include use of facilities, vehicles, and instructors sufficient to issue a commercial driver's license.

(3) The department of transportation may establish rules for the development and administration of an entry-level driver training program.

Section 2. Section 61-5-110, MCA, is amended to read:

"**61-5-110. Records check of applicants -- examination of applicants -- cooperative driver testing programs -- reciprocal agreement with foreign country.** (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) (a) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle or motorcycle. The road test or skills test must be performed by the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle for which the applicant is seeking a license or endorsement.

(b) The knowledge test, road test, or skills test may be waived by the department:

(i) upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program as provided in subsection ~~(3)~~ *(4)* or by a certified third-party commercial driver testing program as provided in 61-5-118; or

(ii) in accordance with a driver's license reciprocity agreement between the department and a foreign country.

(c) The skills test may be waived by the department upon the applicant's completion of the requirements of 61-5-123.

(3) The department shall, pursuant to administrative rule authority granted in 61-14-202(4), (5), and (6), conduct records checks prior to processing a nonexempt commercial driver's license application and prior to renewing, transferring, or upgrading a commercial driver's license or commercial learner's permit, and shall act in conformity with the legislative direction provided in 61-14-202(5) and (6) upon receiving results from records checks. The department shall implement the administrative rules on or before January 1, 2024.

~~(3)~~*(4)* The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests or skills tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

~~(4)~~*(5)* (a) Except as otherwise provided by law, an applicant who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, an applicant surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and road or skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant.

~~(5)~~*(6)* The department may enter into a reciprocity agreement with a foreign country to provide for the mutual recognition and exchange of a valid driver's license issued by this state or the foreign country if the department determines that the licensing standards of the foreign country are comparable

to those of this state. The agreement may not include the reciprocal exchange of a commercial driver's license."

Section 3. Section 61-14-202, MCA, is amended to read:

"**61-14-202. Rulemaking authority -- commercial driver licensing.** (1) The department shall adopt rules governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants that the department considers necessary for the safety and welfare of the traveling public. The rules must:

(a) subject to the department's functional and vision requirements, conform to the licensing standards and requirements of 49 CFR, part 383, the medical qualification of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572*, unless a waiver from a licensing standard or requirement has been granted by the federal department of transportation*;

(b) allow for the issuance of an interstate commercial driver's license;

(c) allow for the issuance of an intrastate-only commercial driver's license, including the establishment of medical qualification and visual acuity standards;

(d) upon receiving a waiver from the federal department of transportation, allow for the issuance of a school bus driver endorsement that waives the knowledge test or skills test based on comparable experience of the endorsement candidate, as established by the department;

~~(d)~~*(e)* establish the requirement for the issuance of a seasonal commercial driver's license, including the waiver of the knowledge and skills test for a qualified person employed in a farm-related service industry;

~~(e)~~*(f)* establish the operational and seasonal restrictions for a seasonal commercial driver's license;

~~(f)~~*(g)* establish the requirements for the medical statement that must be submitted for a person to be qualified for a commercial driver's license; and

~~(g)~~*(h)* allow for and establish the requirements for the issuance of a commercial learner's permit.

(2) The department shall adopt rules governing the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118 and governing the certification, operation, and monitoring of third-party skills testing programs. The rules must:

(a) substantially comply with the licensing standards and requirements of 49 CFR, part 383, and the state compliance standards of 49 CFR, part 384, including:

(i) issuance of a commercial driver's license skills testing certificate to a certified program upon execution of a third-party skills testing agreement;

(ii) requiring that all third-party skills test examiners meet minimum qualifications, including passing background checks paid for by the third-party testing program and successfully completing a formal skills test examiner training course;

(iii) providing examiner test limitations, minimum testing standards, and refresher training requirements; and

(iv) requiring recordkeeping and a detailed audit program that includes overt and covert test monitoring and onsite audits by state and federal personnel;

(b) specifically address the requirements for certifying third-party commercial driver testing programs, including place of business, appropriate bond and liability insurance, and facilities requirements; and

(c) specify minimum technology requirements for recordkeeping, scheduling applicants for the skills test, conducting the skills test, and electronically transferring skills test results to the department.

(3) The department shall adopt rules governing the waiver of knowledge and skills tests related to commercial vehicle operators with military experience *as provided in 61-5-123*.

(4) The department shall adopt rules governing the administration of a commercial driver's license skills test for a nonexempt applicant for a class A or class B commercial driver's license, for upgrading a commercial driver's license from class B to class A, and for obtaining a passenger or school bus endorsement and the administration of a knowledge test for a hazardous materials endorsement. The rules must provide:

(a) for the department conducting an electronic query to the entry-level driver training provider registry;

(b) that the department may not conduct a skills test or hazardous materials endorsement knowledge test when the entry-level driver training provider registry does not validate that the nonexempt applicant completed the requisite entry-level driver training; and

(c) that an examiner of school bus driver endorsement candidates has had a commercial driver's license issued in Montana in the last 10 years and preferably has at least 2 years of experience driving a school bus in Montana.

(5) The department shall adopt rules that provide that prior to issuing, renewing, transferring, or upgrading a commercial driver's license or commercial learner's permit, the department shall conduct a check of the applicant's eligibility by electronically querying the commercial drug and alcohol clearinghouse. The rules must provide that the department may not issue, renew, transfer, or upgrade a commercial driver's license or commercial learner's permit when the result from the clearinghouse indicates the driver is prohibited from operating a commercial motor vehicle.

(6) The department shall adopt rules that provide that upon receiving federal motor carrier safety administration notification that the commercial learner's permit or commercial driver's license holder is prohibited from operating a commercial motor vehicle, the department shall initiate established procedures for downgrading the commercial learner's permit or commercial driver's license. The rules must provide that downgrade must be completed and recorded on the commercial driver's license system driver record within 60 days of the notification. The rules must further provide that if, after the department completes and records the downgrade on the commercial driver's license system driver record, the department receives federal motor carrier safety administration notification that:

(a) a driver is no longer prohibited from operating a commercial motor vehicle, the department shall make the driver eligible for reinstatement of the commercial learner's permit or commercial driver's license privilege to the driver's license; and

(b) the driver was erroneously identified as prohibited from operating a commercial motor vehicle, the department shall:

(i) reinstate the commercial learner's permit or commercial driver's license privilege to the driver's license as expeditiously as possible; and

(ii) expunge from the commercial driver's license system driver record and motor vehicle record any reference related the driver's erroneous prohibited status."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 1].

Section 5. Effective dates -- contingency. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3(1)(d)] is effective on the date that the Montana department of justice certifies to the code commissioner that the federal department of transportation has granted a waiver to the state under [section 3(1)(d)].

Section 6. Applicability. A holder of a commercial learner's permit that was issued prior to the adoption of administrative rules on or before January 1, 2024, pursuant to [section 2(3)] is exempt from the entry-level driver training records check requirements under [sections 2(3) and 3(4) through (6)] as long as the permit holder obtains a commercial driver's license prior to the expiration, renewal, or extension of the commercial learner's permit.

Approved May 19, 2023

CHAPTER NO. 647

[SB 93]

AN ACT GENERALLY REVISING BALLOT ISSUE LAWS; PROVIDING AND REVISING SUBMISSION AND PROCESSING TIMELINES FOR STATEWIDE BALLOT ISSUES; CLARIFYING SUBSTANTIVE AND PROCEDURAL PROVISIONS APPLICABLE TO BALLOT ISSUES; REORGANIZING STATUTORY PROVISIONS RELATED TO BALLOT ISSUES; PROVIDING DEFINITIONS; ESTABLISHING A FEE FOR FILING BALLOT ISSUES; PROVIDING A PENALTY; PROHIBITING FILING A BALLOT ISSUE SUBSTANTIALLY SIMILAR TO A DEFEATED BALLOT ISSUE OF THE PAST 4 YEARS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 5-5-215, 5-11-105, 7-5-132, 7-7-2224, 7-14-204, 13-27-102, 13-27-103, 13-27-105, 13-27-112, 13-27-201, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-209, 13-27-210, 13-27-211, 13-27-301, 13-27-303, 13-27-304, 13-27-308, 13-27-311, 13-27-316, 13-27-317, 13-27-401, 13-27-402, 13-27-403, 13-27-406, 13-27-407, 13-27-409, 13-27-410, 13-27-501, 13-27-502, 13-27-503, 13-27-504, 13-37-126, 13-37-201, 13-37-228, AND 30-18-103, MCA; REPEALING SECTIONS 13-27-111, 13-27-113, 13-27-202, 13-27-208, 13-27-312, AND 13-27-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Ballot statements" means a statement of purpose and implication and a yes and no statement.

(2) "Constitutional convention initiative" means a statewide initiative to submit to the qualified electors the question of whether there must be an unlimited convention to amend the Montana constitution as authorized in Article XIV, section 2, of the Montana constitution.

(3) "Constitutional convention referendum" means a legislative act submitting the question of whether there must be an unlimited convention to revise, alter, or amend the Montana constitution to the qualified electors that is referred by the legislature as authorized in Article XIV, section 1, of the Montana constitution.

(4) "Constitutional initiative" means a statewide initiative to enact constitutional law as authorized in Article XIV, section 9, of the Montana constitution.

(5) "Constitutional referendum" means a legislative act to enact constitutional law that is referred by the legislature to the qualified electors for approval or rejection as authorized in Article XIV, section 8, of the Montana constitution.

(6) "Enact" means to enact, amend, or repeal.

(7) "Legal sufficiency" or "legally sufficient" means that a petition complies with statutory and constitutional requirements governing submission of the proposed issue to the qualified electors and the substantive legality of the proposed issue if approved by the voters.

(8) "Legislative referendum" means a legislative act to enact statutory law that is referred by the legislature to the qualified electors for approval or rejection as authorized in Article III, section 5, of the Montana constitution.

(9) "Petition" means a petition for a statewide initiative or a statutory referendum prepared pursuant to the requirements of this chapter.

(10) "Statewide ballot issue" means a statewide initiative or a statewide referendum.

(11) "Statewide initiative" means a constitutional initiative, a constitutional convention initiative, or a statutory initiative.

(12) "Statewide referendum" means a constitutional referendum, a constitutional convention referendum, a legislative referendum, or a statutory referendum.

(13) "Statewide referendum referred to a vote of the people by the legislature" means a constitutional referendum, a constitutional convention referendum, or a legislative referendum.

(14) "Statutory initiative" means an initiative to enact statutory law as authorized in Article III, section 4, of the Montana constitution.

(15) "Statutory referendum" means a legislative act to enact statutory law that is referred by petition to the qualified electors for approval or rejection as authorized in Article III, section 5, of the Montana constitution.

Section 2. Statement of purpose and implication. (1) A statement of purpose and implication expresses the true and impartial explanation of the proposal in plain, easily understood language. The statement of purpose and implication may not be argumentative or written so as to create prejudice for or against the issue.

(2) A statement of purpose and implication may not exceed 135 words.

(3) Unless altered by the court under 13-27-316, a statement of purpose and implication is the petition title for an issue circulated by petition and the ballot title if the issue circulated by petition is placed on the ballot.

Section 3. Yes and no statement. (1) A yes and no statement specifies that a positive vote indicates support for the issue and a negative vote indicates opposition to the issue.

(2) The yes and no statement must be placed beside the diagram provided for marking of the ballot in a manner similar to the following:

[ ] YES on (insert the type of ballot issue and its number)

[ ] NO on (insert the type of ballot issue and its number)

(3) The type of ballot issue and its number required by subsection (2) must be designated by the secretary of state as provided in 13-27-203 after the secretary of state receives notice from the attorney general that the petition has been found legally sufficient as provided in this part.

(4) The yes and no statement may not include additional material beyond the requirements of subsection (2).

Section 4. Submission and processing of statewide ballot issues -- required nonrefundable filing fee. (1) A proponent of a statutory initiative shall submit the text of the proposed initiative to the secretary of state in accordance with [section 5].

(2) A proponent of a statutory referendum shall submit the text of the proposed referendum to the secretary of state in accordance with [section 6].

(3) A proponent of a constitutional initiative shall submit the text of the proposed initiative to the secretary of state in accordance with [section 7].

(4) A proponent of a constitutional convention initiative shall submit the text of the proposed initiative to the secretary of state in accordance with [section 8].

(5) A constitutional referendum, a constitutional convention referendum, or a legislative referendum passed by the legislature must be processed in accordance with [section 9].

(6) (a) A proponent of a statutory initiative, a statutory referendum, a constitutional initiative, or a constitutional convention initiative shall include a nonrefundable filing fee of $3,700 per submitted proposal at the time of submittal to the secretary of state.

(b) The fee must be deposited in an account to the credit of the secretary of state in accordance with 2-15-405(4). The secretary of state's office shall retain $700, and distribute $2,000 to the legislative services division and $1,000 to the department of justice to help defray the costs of review by those offices.

(c) A proponent may seek a waiver from the fee required in subsection (6)(a) by demonstrating a financial inability to pay without substantial hardship. If a proponent is granted a fee waiver and later financial disclosure forms required by 13-37-225 show financial ability to pay the fee, the proponent is required to pay the fee at that time. If the proponent still fails to pay the fee, a penalty of up to three times the amount of the submission fee may be assessed.

(d) The secretary of state may adopt rules to provide for the administration of this subsection (6).

(7) A statewide initiative filed under the provisions of this chapter may not be filed if it is substantially the same as a measure defeated by the voters in an election within the preceding 4 years.

Section 5. Statutory initiative process and procedure. (1) (a) A proponent of a statutory initiative shall submit the text of the proposed statutory initiative to the secretary of state together with draft ballot statements and the filing fee required by [section 4]. The secretary of state shall, without undue delay, forward a copy of the text of the proposed statutory initiative and ballot statements to the legislative services division for review in accordance with [section 10].

(b) A proposed statutory initiative may not be accepted by the secretary of state until 10 days after the adjournment sine die of the regular legislative session preceding the general election during which the proposal is intended to be voted on. The prohibitions on acceptance of a proposed statutory initiative provided in this subsection (1)(b) do not apply to a submission received on or after the date that falls 130 days after the date that the legislature convened in regular session pursuant to 5-2-103, even if the legislature has not adjourned sine die. If the secretary of state rejects a proposed statutory initiative pursuant to this subsection (1)(b), the secretary of state shall promptly notify the person who submitted the proposal of the reason for the rejection.

(2) Within 14 days after receiving the proposed statutory initiative from the secretary of state, the legislative services division shall respond in writing to the proponent in accordance with [section 10].

(3) After the proponent responds to the legislative services division as provided in [section 10], the proponent shall submit the final text of the proposed statutory initiative and ballot statements to the secretary of state. However, if a response to the legislative services division is not required by the proponent pursuant to [section 10], the proponent shall instead submit the final text of the proposed statutory initiative and ballot statements to the secretary of state after the proponent receives the legislative services division's response.

(4) On receipt of the final text of the proposed statutory initiative and the ballot statements, the secretary of state shall reject the proposed statutory initiative if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. Otherwise, the secretary of state shall, without undue delay, refer a copy of the proposed statutory initiative and ballot statements concurrently to the budget director and to the attorney general for the attorney general's review in accordance with [section 11].

(5) The budget director shall determine whether a fiscal note is necessary. If the budget director determines a fiscal note is necessary, the budget director shall prepare a fiscal note, notify the attorney general of the necessity of the fiscal note, and provide a copy of the fiscal note pursuant to [section 12] within 10 days. Receipt of the notice from the budget director begins the time frame in subsection (7).

(6) In addition to the requirements of [section 11], the attorney general shall:

(a) include in the attorney general's legal sufficiency review whether the proposed statutory initiative constitutes an appropriation as set forth in 13-27-211; and

(b) review the proposed statutory initiative as to whether the proposal could cause a regulatory taking under Montana law or otherwise will likely cause significant material harm to one or more business interests in the state if approved by the voters. If the attorney general determines the proposed statutory initiative will likely cause significant material harm to one or more business interests in the state, the attorney general shall notify the secretary of state, which must include the finding set forth in 13-27-204(2) on the final form of the petition.

(7) Within 30 days of receipt of the proposed statutory initiative from the secretary of state, the attorney general shall complete the requirements set forth in [section 11] and subsection (6) of this section.

(8) The secretary of state shall review the legal sufficiency opinion received pursuant to [section 11].

(a) If the attorney general finds that the proposed statutory initiative is not legally sufficient, the secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that the proposed statutory initiative has been rejected. The notice must include a copy of the attorney general's legal sufficiency opinion.

(b) If the attorney general finds that the proposed statutory initiative is legally sufficient, the secretary of state shall, without undue delay, provide the executive director of the legislative services division a copy of the final text of the proposed statutory initiative and ballot statements in accordance with [section 13]. After the executive director of the legislative services division provides the secretary of state the outcome of the vote as required by [section 13], the secretary of state shall immediately send a sample petition form as provided in [section 14] to the person submitting the proposed statutory initiative.

Section 6. Statutory referendum process and procedure. (1) (a) A proponent of a statutory referendum shall submit the text of the proposed statutory referendum to the secretary of state together with draft ballot statements and the filing fee required by [section 4]. The secretary of state shall forward a copy of the text of the proposed statutory referendum and ballot statements to the legislative services division for review in accordance with [section 10].

(b) A proposed statutory referendum may not be accepted by the secretary of state until 10 days after the adjournment sine die of the regular legislative session preceding the general election during which the proposal is intended to be voted on. The prohibitions on acceptance of a proposed statutory referendum provided in this subsection (1)(b) do not apply to a submission received on or after the date that falls 130 days after the date that the legislature convened in regular session pursuant to 5-2-103, even if the legislature has not adjourned sine die. If the secretary of state rejects a proposed statutory referendum pursuant to this subsection (1)(b), the secretary of state shall promptly notify the person who submitted the proposal of the reason for the rejection.

(2) Within 7 days after receiving the proposed statutory referendum from the secretary of state, the legislative services division shall respond in writing to the proponent in accordance with [section 10].

(3) After the proponent responds to the legislative services division as provided in [section 10], the proponent shall submit the final text of the proposed statutory referendum and ballot statements to the secretary of state. However, if a response to the legislative services division is not required by the proponent pursuant to [section 10], the proponent shall instead submit the final text of the proposed statutory referendum and ballot statements to the secretary of state after the proponent receives the legislative services division's response.

(4) On receipt of the final text of the proposed statutory referendum and the ballot statements, the secretary of state shall reject the proposed statutory referendum if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. Otherwise, the secretary of state shall refer a copy of the proposed statutory referendum and ballot statements concurrently to the budget director and the attorney general.

(5) (a) The budget director shall determine whether a fiscal note is necessary, prepare the fiscal note, notify the attorney general of the necessity of its determination, and provide a copy of the fiscal note, if required, pursuant to [section 12] within the timeframe required in subsection (5)(b). Receipt of the notice from the budget director begins the time frame in subsection (6) for the attorney general's review in accordance with [section 11].

(b) If the legislative act that is the subject of the proposed statutory referendum had a fiscal note prepared pursuant to 5-4-202 during the legislative session in which the bill was proposed, the budget director shall return the fiscal note to the attorney general within 3 days. If the legislative act that is the subject of the proposed statutory referendum did not have a fiscal note prepared pursuant to 5-4-202 during the legislative session in which the bill was proposed, the budget director shall return the fiscal note to the attorney general within 6 days.

(6) If the budget director is allowed 3 days to return the fiscal note pursuant to subsection (5), the attorney general shall complete the requirements set forth in [section 11] within 14 days of the receipt of the proposed statutory referendum from the secretary of state. However, if the budget director is allowed 6 days to return the fiscal note pursuant to subsection (5), the attorney

general shall complete the requirements set forth in [section 11] within 17 days of the receipt of the proposed statutory referendum from the secretary of state.

(7) The secretary of state shall review the legal sufficiency opinion received pursuant to [section 11]. If the attorney general:

(a) finds that the proposed statutory referendum is not legally sufficient, the secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that the proposed statutory referendum has been rejected. The notice must include a copy of the attorney general's legal sufficiency opinion.

(b) finds that the proposed statutory referendum is legally sufficient, the secretary of state shall immediately send a sample petition form as provided in [section 14] to the person submitting the proposed statutory referendum.

Section 7. Constitutional initiative process and procedure. (1) A proponent of a constitutional initiative shall submit the text of the proposed constitutional initiative to the secretary of state together with draft ballot statements and the filing fee required by [section 4]. The secretary of state shall, without undue delay, forward a copy of the text of the proposed constitutional initiative and ballot statements to the legislative services division for review in accordance with [section 10].

(2) Within 14 days after receiving the proposed constitutional initiative from the secretary of state, the legislative services division shall respond in writing to the proponent in accordance with [section 10].

(3) After the proponent responds to the legislative services division as provided in [section 10], the proponent shall submit the final text of the proposed constitutional initiative and ballot statements to the secretary of state. However, if a response to the legislative services division is not required by the proponent pursuant to [section 10], the proponent shall instead submit the final text of the proposed constitutional initiative and ballot statements to the secretary of state after the proponent receives the legislative services division's response.

(4) On receipt of the final text of the proposed constitutional initiative and the ballot statements, the secretary of state shall reject the proposed constitutional initiative if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. Otherwise, the secretary of state shall, without undue delay, refer a copy of the proposed constitutional initiative and ballot statements concurrently to the budget director and to the attorney general.

(5) The budget director shall determine whether a fiscal note is necessary, prepare the fiscal note, notify the attorney general of the necessity of the fiscal note, and provide a copy of the fiscal note pursuant to [section 12] within 10 days. Receipt of the notice from the budget director begins the timeframe in subsection (7) for the attorney general's review in accordance with [section 11].

(6) In addition to the requirements in [section 11], the attorney general shall review the proposed constitutional initiative as to whether the proposal could cause a regulatory taking under Montana law or otherwise will likely cause significant material harm to one or more business interests in the state if approved by the voters. If the attorney general determines the proposed constitutional initiative will likely cause significant material harm to one or more business interests in the state, the attorney general shall notify the secretary of state, which must include the finding set forth in 13-27-207 on the final form of the petition.

(7) Within 30 days of receipt of the fiscal note determination from the budget director, the attorney general shall complete the requirements set forth in [section 11] and subsection (6) of this section.

(8) The secretary of state shall review the legal sufficiency opinion received pursuant to [section 11]. If the attorney general:

(a) finds that the proposed constitutional initiative is not legally sufficient, the secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that the proposed constitutional initiative has been rejected. The notice must include a copy of the attorney general's legal sufficiency opinion.

(b) finds that the proposed constitutional initiative is legally sufficient, the secretary of state shall, without undue delay, provide the executive director of the legislative services division a copy of the final text of the proposed constitutional initiative and ballot statements in accordance with [section 13]. After the executive director of the legislative services division provides the secretary of state the outcome of the vote as required by [section 13], the secretary of state shall immediately send a sample petition form as provided in [section 14] to the person submitting the proposed constitutional initiative.

Section 8. Constitutional convention initiative process and procedure. (1) A proponent of a constitutional convention initiative shall submit the text of the proposed constitutional convention initiative to the secretary of state together with draft ballot statements and the filing fee required by [section 4]. The secretary of state shall, without undue delay, forward a copy of the text of the proposed constitutional convention initiative and ballot statements to the legislative services division for review in accordance with [section 10].

(2) Within 14 days after receiving the proposed constitutional convention initiative from the secretary of state, the legislative services division shall respond in writing to the proponent in accordance with [section 10].

(3) After the proponent responds to the legislative services division as provided in [section 10], the proponent shall submit the final text of the proposed constitutional convention initiative and ballot statements to the secretary of state. However, if a response to the legislative services division is not required by the proponent pursuant to [section 10], the proponent shall instead submit the final text of the proposed constitutional convention initiative and ballot statements to the secretary of state after the proponent receives the legislative services division's response.

(4) On receipt of the final text of the proposed constitutional convention initiative and the ballot statements, the secretary of state shall reject the proposed constitutional convention initiative if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. Otherwise, the secretary of state shall, without undue delay, refer a copy of the proposed constitutional convention initiative and ballot statements concurrently to the budget director and to the attorney general.

(5) The budget director shall determine whether a fiscal note is necessary, prepare the fiscal note, notify the attorney general of the necessity of the fiscal note, and provide a copy of the fiscal note pursuant to [section 12] within 10 days. Receipt of the notice from the budget director begins the time frame in subsection (6) and the attorney general's review in accordance with [section 11].

(6) Within 30 days of receipt of the fiscal note determination from the budget director, the attorney general shall complete the requirements set forth in [section 11].

(7) The secretary of state shall review the legal sufficiency opinion received pursuant to [section 11]. If the attorney general:

(a) finds that the proposed constitutional convention initiative is not legally sufficient, the secretary of state shall, without undue delay, send written notice to the person who submitted the proposal that the proposed constitutional convention initiative has been rejected. The notice must include a copy of the attorney general's legal sufficiency opinion.

(b) finds that the proposed constitutional convention initiative is legally sufficient, the secretary of state shall, without undue delay, provide the executive director of the legislative services division a copy of the final text of the proposed constitutional convention initiative and ballot statements in accordance with [section 13]. After the executive director of the legislative services division provides the secretary of state the outcome of the vote as required by [section 13], the secretary of state shall immediately send a sample petition form as provided in [section 14] to the person submitting the proposed constitutional convention initiative.

Section 9. Statewide referendum referred by legislature -- process and procedure. (1) A statewide referendum referred to a vote of the people by the legislature must comply with the requirements of 5-4-102.

(2) The secretary of state shall transmit a statewide referendum proposed by the legislature to the attorney general according to the requirements of 13-27-209.

(3) (a) On receipt from the secretary of state of a statewide referendum referred to a vote of the people by the legislature, the attorney general shall prepare and forward to the secretary of state, within 30 days, ballot statements that comply with [sections 2 and 3], except that the attorney general may not prepare a statement of purpose and implication if the statement has been provided by the legislature.

(b) When preparing a ballot statement pursuant to this section, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice.

Section 10. Review by legislative services division. (1) On receipt of a proposed statutory initiative, statutory referendum, constitutional initiative, or constitutional convention initiative and the proposal's ballot statements from the office of the secretary of state as provided in [section 5(1)], [section 6(1)], [section 7(1)], or [section 8(1)], the legislative services division staff shall review the text and ballot statements for clarity, consistency, and conformity with the most recent edition of the bill drafting manual furnished by the legislative services division, the requirements of this part, and any other factors that the staff considers when drafting proposed legislation.

(2) (a) The legislative services division staff shall recommend in writing to the proponent revisions to the text and revisions to the ballot statements to make them consistent with any recommendations for change to the text and the requirements of this part or state that no revisions are recommended.

(b) The proponent shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended revisions. If revisions are not recommended, a response is not required.

(3) The legislative services division shall furnish a copy of the correspondence provided for in subsection (2) to the secretary of state, who shall make a copy of the correspondence available to any person on request.

Section 11. Review by attorney general. (1) On receipt of a proposed statutory initiative, statutory referendum, constitutional initiative, or constitutional convention initiative and the proposal's ballot statements from

the office of the secretary of state and the fiscal note determination from the budget director as provided in this part, the attorney general shall examine the proposal, review the proposal for legal sufficiency as provided in subsection (2), review the ballot statements if required by subsection (3), prepare a fiscal statement if required by subsection (4), and determine if the proposal conflicts with other issues that may appear on the ballot at the same election as provided in subsection (5).

(2) The attorney general shall examine the proposal received pursuant to subsection (1), prepare an opinion as to the proposal's legal sufficiency, and forward the opinion to the secretary of state.

(3) (a) If the attorney general determines that the proposal is legally sufficient, the attorney general shall review the ballot statements to determine whether they contain the following matters:

(i) a statement of purpose and implication that complies with [section 2]; and

(ii) a yes and no statement that complies with [section 3].

(b) The attorney general shall, in reviewing the ballot statements, endeavor to seek out parties on both sides of the issue and obtain their advice.

(c) If the attorney general determines the ballot statements comply with the requirements provided in subsection (3)(a), the attorney general shall approve the ballot statements and forward them to the secretary of state. However, if the attorney general determines in writing that a ballot statement clearly does not comply with the relevant requirements of subsection (3)(a), the attorney general shall prepare a ballot statement that complies with the relevant requirements of subsection (3)(a). The attorney general shall forward the revised ballot statement to the secretary of state as the approved ballot statement and shall provide a copy to the petitioner.

(4) If the proposal affects the revenue, expenditures, or fiscal liability of the state, the budget director shall prepare the fiscal note as provided in [section 12]. If the fiscal note indicates a fiscal impact, the attorney general shall prepare a fiscal statement of no more than 50 words and forward it to the secretary of state. The statement must be used on the proposal's petition and on the ballot if the proposal is placed on the ballot.

(5) The attorney general shall determine if the proposal conflicts with one or more issues that may appear on the ballot at the same election for the purposes of 13-27-501(2)(h) and shall forward the attorney general's written determination to the secretary of state.

(6) If the attorney general determines that the proposal is not legally sufficient, the secretary of state may not deliver a sample petition form unless the attorney general's opinion is overruled pursuant to 13-27-316 and the attorney general has approved or prepared ballot statements under this section.

Section 12. Preparation of fiscal note. (1) If the proposal affects the revenue, expenditures, or fiscal liability of the state, the budget director shall determine whether a fiscal note is necessary. If a fiscal note is required, the budget director, in cooperation with the agency or agencies affected by the statewide ballot issue, shall prepare the fiscal note.

(2) The fiscal note must incorporate an estimate of the proposal's effect on the revenue, expenditures, or fiscal liability of the state, and the substance of the fiscal note must substantially comply with the provisions of 5-4-205.

(3) The budget director shall return the fiscal note to the attorney general.

(4) If a revised fiscal note is requested pursuant to [section 13], the budget director shall prepare a revised fiscal note within 3 days and provide the revised fiscal note to the executive director of legislative services division.

(5) A revised fiscal note produced pursuant to [section 13] does not trigger an additional attorney general review or a revision of the fiscal impact statement under [section 11].

Section 13. Review by legislative committee. (1) If the attorney general finds that a proposed statewide initiative is legally sufficient as provided in this part, the secretary of state shall provide the executive director of the legislative services division with a copy of the final text of the proposed statewide initiative and ballot statements. The executive director shall forward the information to the appropriate interim committee for review in accordance with 5-5-215. If questions arise regarding which interim committee has jurisdiction over the matter, the executive director shall direct the review to the legislative council in accordance with 5-11-105.

(2) (a) The appropriate interim committee or the legislative council shall meet and hold a public hearing after receiving the information and vote to either support or not support the placement of the proposed statewide initiative text on the ballot.

(b) The interim committee or the legislative council may request a fiscal note if one was previously not determined necessary and may request a revised fiscal note from the budget director if new information is provided which would impact the fiscal note determination or accuracy of the initial fiscal note.

(c) For the purposes of this section, proxies must be allowed for legislators unable to participate if a quorum of the interim committee or legislative council meets.

(d) Nothing in this section prevents the interim committee or legislative council from meeting remotely or via conference call or other electronic means.

(3) (a) The executive director shall provide written correspondence to the secretary of state stating the name of the council or interim committee that voted on the proposal pursuant to subsection (2)(a), the date of the vote, and the outcome of the vote conducted in accordance with this section.

(b) The outcome of the vote must be submitted to the secretary of state no later than 14 days after receipt of the final text of the proposed statewide initiative and ballot statements.

(4) The outcome of the vote by an interim committee or the legislative council may not be reflected in the statewide initiative's statement of purpose and implication, the statewide initiative's petition title, or the ballot title if the statewide initiative is placed on the ballot.

Section 14. Provision of finalized petition for signature. (1) When the requirements of [section 5, 6, 7, or 8] are complete and the proposed statewide ballot issue has been found legally sufficient pursuant to [section 11], the secretary of state shall immediately send to the person submitting the proposed statewide ballot issue a sample petition form, including the text of the proposed statewide ballot issue, the statement of purpose and implication, and the yes and no statement, as prepared by the petitioner, reviewed by the legislative services division, and approved by the attorney general and in the form provided by this part.

(2) A signature gatherer may circulate the petition only in the form of the sample prepared by the secretary of state.

(3) The secretary of state shall immediately provide a copy of the sample petition form to any interested parties who have made a request to be informed of an approved petition.

Section 15. Circulation of petitions -- limitation. Petitions may not be circulated for the purpose of signature gathering more than 1 year prior to the final date for filing the signed petition with the county election administrator.

Section 16. Notification of petitioner -- legal action concerning petition. If a legal action is filed challenging the validity of a petition, the secretary of state shall immediately notify the person who submitted the proposed statewide ballot issue.

Section 17. Section 5-5-215, MCA, is amended to read:

"**5-5-215. Duties of interim committees.** (1) Each interim committee shall:

(a) review administrative rules within its jurisdiction;

(b) subject to 5-5-217(3), conduct interim studies as assigned;

(c) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

(d) review, if requested by any member of the interim committee, the statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;

(e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules;

(f) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work; and

(g) review proposed ~~ballot~~ *statewide* initiatives *as defined in [section 1]* within the interim committee's subject area and vote to either support or not support the placement of the text of ~~an~~ *the proposed statewide* initiative on the ballot in accordance with ~~13-27-202~~ *[section 13]*.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee."

Section 18. Section 5-11-105, MCA, is amended to read:

"**5-11-105. Powers and duties of council.** (1) The legislative council shall:

(a) employ and, in accordance with the rules for classification and pay established as provided in this section, set the salary of an executive director of the legislative services division, who serves at the pleasure of and is responsible to the legislative council;

(b) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules for classification and pay of legislative branch employees, other than those of the office of consumer counsel;

(c) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules governing personnel management of branch employees, other than those of the office of consumer counsel;

(d) adopt procedures to administer legislator claims for reimbursements authorized by law for interim activity;

(e) establish time schedules and deadlines for the interim committees of the legislature, including dates for requesting bills and completing interim work;

(f) review proposed legislation for agencies or entities that are not assigned to an interim committee, as provided in 5-5-223 through 5-5-228, or to the environmental quality council, as provided in 75-1-324;

(g) review proposed ~~ballot~~ *statewide* initiatives *as defined in [section 1]* and vote to either support or not support the placement of the text of ~~an~~ *the proposed statewide* initiative on the ballot in accordance with ~~13-27-202~~ *[section 13]*; and

(h) perform other duties assigned by law.

(2) If a question of statewide importance arises when the legislature is not in session and a legislative interim committee has not been assigned to consider the question, the legislative council shall assign the question to an appropriate interim committee, as provided in 5-5-202, or to the appropriate statutorily created committee."

Section 19. Section 7-5-132, MCA, is amended to read:

"**7-5-132. Procedure for initiative or referendum election.** (1) The electors of a local government may, by petition, request an election on whether to enact, repeal, or amend an ordinance. The form of the petition must be approved by the county election administrator. A petition signed by at least 15% of the local government's qualified electors is sufficient to require an election.

(2) (a) If an approved petition containing sufficient signatures is filed prior to the ordinance's effective date or within 60 days after the passage of the ordinance, whichever is later, a petition requesting an election on whether to amend or repeal the ordinance delays the ordinance's effective date until the ordinance is ratified by the electors.

(b) If an approved petition containing sufficient signatures is filed within 60 days after the effective date of an emergency ordinance, the emergency ordinance is suspended until it is ratified by the electors.

(3) The governing body may refer an existing or proposed ordinance to a vote of the people by resolution.

(4) A petition or resolution for an election must:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought, the ordinance to be amended and the proposed amendment, or the ordinance to be repealed;

(c) ~~be in the form prescribed in Title 13, chapter 27,~~ except as specifically provided in this part, *be in the form prescribed in 13-27-201 and 13-27-204 for an initiative or 13-27-201 and 13-27-205 for a referendum*; and

(d) contain transition provisions if the measure changes terms of office or forms of government.

(5) An election held pursuant to this section must be conducted in conjunction with the next local government election held in accordance with Title 13, chapter 1, part 4, except that if the petition asks for a special election, specifies an election date that complies with 13-1-405, and is signed by at least 25% of the qualified electors, a special election must be held on the date specified in the petition.

(6) If a majority of those voting on the question approve the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal."

Section 20. Section 7-7-2224, MCA, is amended to read:

"**7-7-2224. Form and contents of petition.** (1) Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if

each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in the petition.

(2) The petition shall be in the form ~~provided in Title 13, chapter 27~~ *prescribed in 13-27-201 and 13-27-204*."

Section 21. Section 7-14-204, MCA, is amended to read:

"**7-14-204. Details relating to petition.** The petition under 7-14-203 must include a map showing the limits of the proposed district or the area to be added to an existing district and must be in the form ~~provided in Title 13, chapter 27~~ *prescribed in 13-27-201 and 13-27-204*."

Section 22. Section 13-27-102, MCA, is amended to read:

"**13-27-102. Who may petition and gather signatures.** (1) A petition ~~for the initiative, the referendum, or to call a constitutional convention~~ may be signed only by a qualified elector of the state of Montana.

(2) A person gathering signatures for ~~the initiative, the referendum, or to call a constitutional convention~~ *a petition*:

~~(a) must be a resident, as provided in 1-1-215, of the state of Montana; and~~

~~(b)~~ may not be paid anything of value based upon the number of signatures gathered."

Section 23. Section 13-27-103, MCA, is amended to read:

"**13-27-103. Sufficiency of signature -- *electronic signatures prohibited.*** *(1)* A signature *for a petition* may not be counted unless *it is the original signature of the elector in ink, and* the elector has signed in substantially the same manner as on the voter registration form. If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature. The signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registration form as to provide reasonable certainty of its authenticity.

(2) Electronic, digital, or facsimile signatures, including electronic signatures pursuant to Title 30, chapter 18, part 1, are prohibited."

Section 24. Section 13-27-105, MCA, is amended to read:

"**13-27-105. Effective date of *statewide* initiative and *statewide* referendum issues.** (1) Unless the petition ~~placing an initiative issue on the ballot~~ states otherwise, ~~an~~ *a statutory* initiative ~~issue, other than a constitutional amendment,~~ *or constitutional convention initiative* approved by the people is effective on October 1 following approval. If ~~the issue~~ *a statutory initiative* delegates rulemaking authority, it is effective no sooner than October 1 following approval.

(2) A constitutional ~~amendment proposed by initiative or by the legislature and~~ *initiative or constitutional referendum that is* approved by the people is effective on July 1 following approval unless the ~~amendment~~ *constitutional initiative or constitutional referendum* provides otherwise.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose

substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election."

Section 25. Section 13-27-112, MCA, is amended to read:

"**13-27-112. ~~Required reports -- time and manner of reporting -- exceptions -- penalty~~ *Signature gathering -- registration -- reports -- penalty.*** (1) *(a) A person who employs a paid signature gatherer shall register with the secretary of state prior to collecting signatures. Except as provided in subsection (1)(b), the registration in this subsection (1) must be accompanied by a filing fee of not more than $100 or an amount set by the secretary of state. The fee must be deposited in an account to the credit of the secretary of state in accordance with 2-15-405(4).*

(b) A person who employs a paid signature gatherer may seek a waiver from the fee required in subsection (1)(a) by demonstrating a financial inability to pay without substantial hardship.

(c) The secretary of state may adopt rules to provide for the administration of this subsection (1), including rules to implement a standard registration form and the waiver provisions in subsection (1)(b).

(2) (a) Except as provided in this section, a person who employs a paid signature gatherer shall file with the commissioner reports containing those matters required by Title 13, chapter 37, part 2, for a political committee organized to support or oppose a ballot issue or for an independent committee that receives contributions and makes expenditures in connection with a ballot issue, as applicable. If a person who employs a paid signature gatherer is required by Title 13, chapter 37, part 2, to file a report pursuant to those provisions, the person need not file a duplicate report pursuant to this section, but shall report the matter required by subsection (2) as part of that report. ~~As used in this section, "a person who employs a paid signature gatherer" means a political party, political committee, or other person seeking to place a ballot issue before the electors and does not mean an individual who is part of the same signature gathering company, partnership, or other business organization that directly hires, supervises, and pays an individual who is a signature gatherer.~~

~~(2)~~*(b)* The reports required by *this* subsection ~~(1)~~ *(2)* must include the amount paid to a paid signature gatherer.

~~(3)~~*(c)* Reports filed pursuant to this ~~section~~ *subsection (2)* must be filed at the same time, in the same manner, including the certification required by 13-37-231, and upon the same forms as required for reports filed pursuant to Title 13, chapter 37, part 2, except as the rules of the commissioner may otherwise provide.

~~(4)~~*(d)* A person who violates subsection ~~(1)~~ *(2)(a)* is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(3) The commissioner has the same powers and duties regarding the regulation of signature gatherers as the commissioner has regarding the control of campaign practices as provided in Title 13, chapter 37, including the investigation of alleged violations of 13-27-112 and the issuance of orders of noncompliance for and prosecution of violations of 13-27-112.

(4) The commissioner may adopt rules to implement subsection (2).

(5) As used in subsections (2) and (3), unless the context indicates otherwise, the following definitions apply:

(a) "Commissioner" means the commissioner of political practices provided for in 13-37-102.

(b) "Paid signature gatherer" means a signature gatherer who is compensated in money for the collection of signatures.

(c) (i) "Person" has the meaning provided in 13-1-101 and includes a political committee.

(ii) The term does not include a candidate.

(d) (i) "Person who employs a paid signature gatherer" means a political party, political committee, or other person seeking to place a ballot issue before the electors.

(ii) The term does not include an individual who is part of the same signature gathering company, partnership, or other business organization that directly hires, supervises, and pays an individual who is a signature gatherer.

(e) "Signature gatherer" means an individual who collects signatures on a petition for the purpose of an initiative, a referendum, or the calling of a constitutional convention."

Section 26. Section 13-27-201, MCA, is amended to read:

"**13-27-201. Form of petition generally.** (1) A petition ~~for the initiative, for the referendum, or to call a constitutional convention~~ must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the issue to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the issue proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the issue must be in the bill form provided in the most recent edition of the bill drafting manual furnished by the legislative services division. If sheets are circulated in sections, the complete text of the issue must be attached to each section.

(3) An internet posting of petition language must include a statement that the petition language and format may not be modified. An internet posting must include an affidavit in substantially the same form as prescribed by the secretary of state pursuant to 13-27-302."

Section 27. Section 13-27-204, MCA, is amended to read:

"**13-27-204. Petition for *statutory* initiative.** (1) The following, including the language provided for in subsection (2)(b), is substantially the form for a petition calling for a vote to enact a ~~law by~~ *statutory* initiative:

PETITION TO PLACE INITIATIVE NO.____ ON THE ELECTION BALLOT

(a) If 5% of the voters in each of one-half of the counties sign this petition and the total number of voters signing this petition is _____, this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the _____, 20__, general election ballot:

(Title of initiative written ~~pursuant to 13-27-312~~ *in conformity with [section 2]*)

~~(Statement of purpose and implication written pursuant to 13-27-312)~~

(Yes and no ~~statements~~ *statement* written ~~pursuant to 13-27-312~~ *in conformity with [section 3]*)

(c) Voters are urged to read the complete text of the initiative, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

(d) Voters are advised that either an interim committee or an administrative committee of the legislature in accordance with 5-5-215 or 5-11-105 reviewed the content of this initiative and [did] or [did not] support the placement of the proposed text of this initiative on the ballot. The outcome of the vote was [x] in favor of placing the measure on the ballot and [x] against placing the measure on the ballot.

(e)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(f) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(2) (a) If the attorney general determines the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana pursuant to ~~13-27-312(9)~~ *[section 5(6)]* the statement in subsection (2)(b) must appear on the front page of the petition form before the information set forth in subsection (1).

(b)

WARNING

The Attorney General of Montana has determined the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana.

(3) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer."

Section 28. Section. 13-27-205, MCA, is amended to read:

"**13-27-205. Petition for *statutory* referendum.** (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by ~~the~~ *statutory* referendum:

PETITION TO PLACE REFERENDUM NO.____ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ____, Senate (House) Bill Number ____ will appear on the next general election ballot. If a majority of voters vote for this referendum at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ____, passed by the legislature on _____ on the next general election ballot:

(Title of referendum written ~~pursuant to 13-27-312~~ *in conformity with [section 2]*)

~~(Statement of purpose and implication written pursuant to 13-27-312)~~

(Yes and no ~~statements~~ *statement* written ~~pursuant to 13-27-312~~ *in conformity with [section 3]*)

(c) Voters are urged to read the complete text of the referendum, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A

signature on this petition is only to put the referendum on the ballot and does not necessarily mean the signer agrees with the referendum.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer."

Section 29. Section 13-27-206, MCA, is amended to read:

"**13-27-206. Petition for ~~initiative for~~ constitutional convention *initiative.*** (1) The following is substantially the form for a petition ~~to direct the secretary of state to submit to the qualified voters the question of whether there will be~~ *for* a constitutional convention *initiative*:

CONVENTION, ON THE ELECTION BALLOT
PETITION TO PLACE INITIATIVE NO.____, CALLING FOR A CONSTITUTIONAL

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is _____, the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention, the legislature shall call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the _____, 20__, general election ballot:

(Title of the initiative written ~~pursuant to 13-27-312~~ *in conformity with [section 2]*)

~~(Statement of purpose and implication written pursuant to 13-27-312)~~

(Yes and no ~~statements~~ *statement* written ~~pursuant to 13-27-312~~ *in conformity with [section 3]*)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d) Voters are advised that either an interim committee or an administrative committee of the legislature in accordance with 5-5-215 or 5-11-105 reviewed the content of this initiative and [did] or [did not] support the placement of the proposed text of this initiative on the ballot. The outcome of the vote was [x] in favor of placing the measure on the ballot and [x] against placing the measure on the ballot.

~~(d)~~*(e)*

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who

signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

~~(c)~~*(f)* Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must also contain spaces for the signature, residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer."

Section 30. Section 13-27-207, MCA, is amended to read:

"**13-27-207. Petition for *constitutional* initiative ~~for constitutional amendment~~.** (1) The following is substantially the form for a petition for ~~an~~ *a constitutional* initiative ~~to amend the constitution~~:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO.____ ON THE ELECTION BALLOT

(a) If 10% of the voters in each of one-half of the counties sign this petition and the total number of voters signing the petition is _____, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the _____, 20__, general election ballot:

(Title of the proposed constitutional ~~amendment~~ *initiative* written ~~pursuant to 13-27-312~~ *in conformity with [section 2]*)

~~(Statement of purpose and implication written pursuant to 13-27-312)~~

(Yes and no ~~statements~~ *statement* written ~~pursuant to 13-27-312~~ *in conformity with [section 3]*)

(c) Voters are urged to read the complete text of the constitutional amendment, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d) Voters are advised that either an interim committee or an administrative committee of the legislature in accordance with 5-5-215 or 5-11-105 reviewed the content of this constitutional initiative and [did] or [did not] support the placement of the proposed text of this constitutional initiative on the ballot. The outcome of the vote was [x] in favor of placing the measure on the ballot and [x] against placing the measure on the ballot.

~~(d)~~*(e)*

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

~~(c)~~*(f)* Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration form or the signature will not be counted.

(2) (a) If the attorney general determines the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana

pursuant to [section 5(6)], the statement in subsection (2)(b) must appear on the front page of the petition form before the information set forth in subsection (1).

(b)

WARNING

The attorney general of Montana has determined the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana.

~~(2)~~*(3)* Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration form may not be used as the only means to disqualify the signature of that petition signer."

Section 31. Section 13-27-209, MCA, is amended to read:

"**13-27-209. Issues referred by legislature.** The secretary of state shall transmit ~~a copy of an act referred to the people or a constitutional amendment proposed by the legislature~~ to the attorney general *a copy of a statewide referendum referred to a vote of the people by the legislature* no later than 6 months before the election at which the issue will be voted on by the people."

Section 32. Section 13-27-210, MCA, is amended to read:

"**13-27-210. Physical prevention of obtaining signatures or physical intimidation of signature gatherers prohibited.** A person may not knowingly or purposefully physically prevent an individual from obtaining signatures or attempting to obtain signatures on a petition for a *statewide* ballot issue or physically intimidate another individual when that individual is obtaining or attempting to obtain signatures on a petition for a *statewide* ballot issue. A person who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, by imprisonment for not more than 90 days, or by both a fine and imprisonment."

Section 33. Section 13-27-211, MCA, is amended to read:

"**13-27-211. Petitions for initiative -- requirements and limitations.** (1) In accordance with Article III, section 4, of the Montana constitution, the text of ~~an~~ *a statutory* initiative may not provide for the appropriation of revenue.

(2) For the purposes of this section, "appropriation" ~~includes but is not limited to the act of designating or setting aside budgetary authority or directly or indirectly incurring a financial obligation with the expectation that a certain amount of money will be expended or directed~~ *means the authority for a governmental entity to expend money from the state treasury* for a specific use or purpose. ~~The term also includes increasing or expanding eligibility to a government program.~~"

Section 34. Section 13-27-301, MCA, is amended to read:

"**13-27-301. Submission of petition sheets -- withdrawal of signatures.** (1) Signed sheets or sections of petitions with original signatures must be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than 4 weeks before the final date for filing the petition with the secretary of state.

(2) If it is impractical to submit signed sheets or sections of petitions with original signatures by the deadline provided in subsection (1), a copy or facsimile may be submitted to the proper county official by the deadline. Signed sheets or sections of petitions with original signatures must be submitted within 7

calendar days after the deadline. Failure to submit signed sheets or sections of petitions with original signatures within 7 calendar days will invalidate the signed sheets or sections submitted by copy or facsimile.

(3) Signatures may be withdrawn from a petition ~~for constitutional amendment, constitutional convention, initiative, or referendum~~ up to the time of final submission of petition sheets as provided in subsection (1). The secretary of state shall prescribe the form to be used by an elector desiring to have the elector's signature withdrawn from a petition."

Section 35. Section 13-27-303, MCA, is amended to read:

"**13-27-303. Verification of signatures by county official -- allocating voters following reapportionment -- duplicate signatures.** (1) Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition for a *statutory* referendum or a ~~call of a~~ constitutional convention *initiative* under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before the first gubernatorial election following the filing of the plan, the new districts must be used with the number of signatures needed for each legislative representative district being the total votes cast for governor in the last gubernatorial election divided by the number of legislative representative districts.

(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the signature gatherer, or both, to the county attorney to be investigated under the provisions of 13-27-106 and 13-35-207."

Section 36. Section 13-27-304, MCA, is amended to read:

"**13-27-304. County official to forward verified sheets.** The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable _____, Secretary of State of the state of Montana:

I, _____, _____ (title) of the County of _____, certify that I have examined the attached sheets of the petition for (*statutory* referendum, *statutory* initiative, constitutional convention *initiative*, or constitutional ~~amendment~~ *initiative*) No. ____ in the manner prescribed by law; and I believe that ____ (number) signatures in (Legislative Representative District No. ____ or the County of ____) (repeat for each district or county included in sheet or section) are valid; and I further certify that the affidavit of the signature gatherer of the petition is attached.

Signed:_____ (Date)_____ (Signature)

Seal_____ (Title)"

Section 37. Section 13-27-308, MCA, is amended to read:

"**13-27-308. Certification of petition to governor.** When a petition ~~for referendum, initiative, constitutional convention, or constitutional amendment~~

containing a sufficient number of verified signatures has been filed with the secretary of state within the time required by the constitution or by law, the secretary of state shall immediately certify to the governor that the completed petition qualifies for the ballot."

Section 38. Section 13-27-311, MCA, is amended to read:

"**13-27-311. Publication of proposed constitutional ~~amendments~~ *initiatives and constitutional referendums.*** (1) If a constitutional ~~amendment proposed by~~ initiative is submitted to the people, the secretary of state shall have the proposed ~~amendment~~ *constitutional initiative* published in full twice each month for 2 months prior to the election at which it is to be voted upon by the people in not less than one newspaper of general circulation in each county.

(2) (a) For a proposed constitutional ~~amendment referred to the voters by the legislature~~ *referendum*, the secretary of state may arrange for newspaper publication or radio or television broadcast of the ~~amendment~~ *constitutional referendum*~~,~~ in each county.

(b) The ballot statements reviewed or prepared by the attorney general for the ~~amendment~~ *constitutional referendum*, as described in ~~13-27-312 or 13-27-315~~ *[section 9]*, are sufficient for the publication allowed by this subsection (2) and should be made at least twice each month for 2 months prior to the election.

(c) The secretary of state shall select the method of notification that the secretary of state believes is best suited to reach the largest number of potential electors."

Section 39. Section 13-27-316, MCA, is amended to read:

"**13-27-316. Court review of attorney general opinion or approved petitioner statements.** (1) If the proponents of a *statewide* ballot issue believe that the ballot statements approved by the attorney general do not satisfy the requirements of ~~13-27-312~~ *[section 2 or 3]* or believe that the attorney general was incorrect in determining that the petition was legally deficient, they may, within 10 days of the attorney general's determination regarding legal sufficiency provided for in ~~13-27-202~~ *[section 11]*, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or modify the attorney general's determination.

(2) If the opponents of a *statewide* ballot issue believe that the petitioner ballot statements approved by the attorney general do not satisfy the requirements of ~~13-27-312~~ *[section 2 or 3]* or believe that the attorney general was incorrect in determining that the petition was legally sufficient, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an original proceeding in the supreme court challenging the adequacy of the statement or the attorney general's determination and requesting the court to alter the statement or overrule the attorney general's determination concerning the legal sufficiency of the petition. The attorney general shall respond to a complaint within 5 days.

(3) (a) Notice must be served upon the secretary of state and upon the attorney general.

(b) If the proceeding requests modification of ballot statements, an action brought under this section must state how the petitioner's ballot statements approved by the attorney general do not satisfy the requirements of ~~13-27-312~~ *[section 2 or 3]* and must propose alternate ballot statements that satisfy the requirements of ~~13-27-312~~ *[sections 2 and 3]*.

(c) (i) Pursuant to Article IV, section 7(2), of the Montana constitution, an action brought pursuant to this section takes precedence over other cases and

matters in the supreme court. The court shall examine the proposed issue and the challenged statement or determination of the attorney general and shall as soon as possible render a decision as to the adequacy of the ballot statements or the correctness of the attorney general's determination.

(ii) If the court decides that the ballot statements do not meet the requirements of ~~13-27-312~~ *[section 2 or 3]*, it may order the attorney general to revise the *ballot* statements within 5 days or certify to the secretary of state ~~a statement~~ *ballot statements* that the court determines will meet the requirements of ~~13-27-312~~ *[sections 2 and 3]*. A *ballot* statement revised by the attorney general pursuant to the court's order or certified by the court must be placed on the petition for circulation and on the official ballot.

(iii) If the court decides that the attorney general's legal sufficiency determination is incorrect and that a proposed issue does not comply with statutory and constitutional requirements governing submission of the issue to the electors, any petitions supporting the issue are void and the issue may not appear on the ballot. A proponent of the *statewide* ballot issue may resubmit a revised issue, pursuant to ~~13-27-202~~ *[section 4]*, subject to the deadlines provided in this chapter.

(iv) If the court decides that the attorney general's legal deficiency determination is incorrect and that a proposed *statewide ballot* issue complies with statutory and constitutional requirements governing submission of the issue to the electors, the attorney general shall prepare ballot statements ~~pursuant to 13-27-312~~ *that comply with [sections 2 and 3]* and forward the statements to the secretary of state within 5 days of the court's decision.

(4) A petition ~~for a proposed ballot issue~~ may be circulated by a signature gatherer upon transmission of the sample petition form by the secretary of state pending review under this section. If, upon review, the attorney general or the supreme court revises the petition form or ballot statements, any petitions signed prior to the revision are void.

(5) An original proceeding in the supreme court under this section is the exclusive remedy for a challenge to the petitioner's ballot statements, as approved by the attorney general, or the attorney general's legal sufficiency determination. A *statewide* ballot issue may not be invalidated under this section after the secretary of state has certified the ballot under 13-12-201.

(6) This section does not limit the right to challenge a constitutional defect in the substance of an issue approved by a vote of the people."

Section 40. Section 13-27-317, MCA, is amended to read:

"**13-27-317. Contest of ballot issue petitions.** (1) Any qualified elector may, within 30 days after the date on which the issue was certified to the governor, file an action in the district court in the county of residence of the qualified elector contesting the certification of a *statewide* ballot issue for illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(2) If a court finds that illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures affected the outcome of the petition process and certification, the secretary of state shall decertify the contested *statewide* ballot issue."

Section 41. Section 13-27-401, MCA, is amended to read:

"**13-27-401. Voter information pamphlet.** (1) The secretary of state shall prepare for printing a voter information pamphlet containing information relevant to the election, including but not limited to the following information for each *statewide* ballot issue to be voted on at an election, as applicable:

(a) ballot title, fiscal statement if applicable, and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet must also contain a notice advising the recipient as to where additional copies of the pamphlet may be obtained.

(3) Whenever more than one *statewide* ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the *statewide* ballot issues. The secretary of state may arrange the information in the order that seems most appropriate, but the information for all *statewide ballot* issues in the pamphlet must be presented in the same order.

(4) The secretary of state may prescribe by rule the format and manner of submission of the arguments concerning the *statewide* ballot issue."

Section 42. Section 13-27-402, MCA, is amended to read:

"**13-27-402. Committees to prepare arguments for and against *statewide* ballot issues.** (1) The arguments advocating approval or rejection of the *statewide* 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~~ *in a legislative referendum, a statutory referendum, a* constitutional ~~amendment referred by the legislature~~ *referendum, or a constitutional convention referendum* must be composed of:

(i) one senator known to favor the referred *statewide* ballot issue, appointed by the president of the senate;

(ii) one representative known to favor the referred *statewide* ballot issue, 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) 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~~ *in a legislative referendum, a constitutional referendum, or a constitutional convention referendum* 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~~ *in* a *legislative referendum, a constitutional referendum, or a* constitutional ~~amendment proposed by the legislature~~ *convention referendum* 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 *statewide* ballot issue to the secretary of state under the provisions of ~~13-27-202~~ *[section 5, 6, 7, or 8]*:

(a) the committee advocating approval of a ballot issue proposed by ~~any type of initiative petition~~ *statutory initiative, constitutional initiative, or constitutional convention initiative*; and

(b) the committee advocating rejection of ~~any~~ *a* legislative act referred to the people ~~by referendum petition~~ *in a statutory referendum*.

(5) A committee advocating rejection of a *statewide* ballot issue proposed by ~~any type of initiative petition~~ *statutory initiative, constitutional initiative, or constitutional convention initiative* 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."

Section 43. Section 13-27-403, MCA, is amended to read:

"**13-27-403. Appointment to committee.** (1) Except as provided in subsection (2), appointments to committees advocating approval or rejection of ~~an act referred to the people, a constitutional amendment proposed by the legislature, or a ballot issue referred to the people by referendum petition or proposed by any type of initiative petition~~ *a statewide ballot issue* must be made no later than 1 week prior to the deadline for filing arguments on the ballot issue under 13-27-406.

(2) Appointments to committees advocating approval or rejection of a ~~ballot issue referred to the people by~~ *statutory* referendum ~~petition~~ or ~~proposed by any type of~~ *a statewide* initiative ~~petition~~ must be made no later than 1 week before the deadline for filing arguments on the ballot issue under 13-27-406. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than the date set by this subsection. The submission must include the written acceptance of appointment from each appointee required by 13-27-402(6). 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.

(3) Within 5 days after receiving notice under subsection (2) but not later than 5 days after the deadline set for appointment of committee members, the secretary of state shall notify the appointees to a committee appointed pursuant to subsection (1) or (2) by certified mail, with return receipt requested, of the deadlines for submission of the committee's arguments."

Section 44. Section 13-27-406, MCA, is amended to read:

"**13-27-406. Limitation on length of argument -- time of filing.** An argument advocating approval or rejection of a *statewide* ballot issue is limited to a single side of a single 7 1/2-inch by 10-inch page and must be filed, in a black-and-white, camera-ready format, with the secretary of state no later than 105 days before the election at which the issue will be voted on by the people. The argument must consist solely of written material prepared by the committee and may not consist of pictures, clippings, or other material. The written material must be prepared in the font and type style required by the secretary of state. With the goal of achieving readability and uniformity, the secretary of state shall prescribe a commonly used font and type style. A

majority of the committee responsible for preparation shall approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline."

Section 45. Section 13-27-407, MCA, is amended to read:

"**13-27-407. Rebuttal arguments.** The secretary of state shall provide copies of the arguments advocating approval or rejection of a *statewide* ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue. The committees may prepare rebuttal arguments no longer than one-half the size of the arguments under 13-27-406 that must be filed, in a black-and-white, camera-ready format, with the secretary of state no later than 10 days after the deadline for filing the original arguments. The argument must consist solely of written material prepared by the committee and may not consist of pictures, clippings, or other material. The written material must be prepared in the font and type style required by the secretary of state. With the goal of achieving readability and uniformity, the secretary of state shall prescribe a commonly used font and type style. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument must be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments."

Section 46. Section 13-27-409, MCA, is amended to read:

"**13-27-409. Fact statement to be supported -- liability for contents of argument.** (1) A factual statement made in an argument advocating approval or rejection of a *statewide* ballot issue or in a rebuttal argument to either of those arguments must be supported by documents filed by the proponents or opponents with the secretary of state within 2 business days of the date on which the statements are required to be filed with the secretary of state.

(2) Nothing in this chapter relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet."

Section 47. Section 13-27-410, MCA, is amended to read:

"**13-27-410. Printing and distribution of voter information pamphlet.** (1) At least 110 days before the election, the secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all *statewide* ballot issues. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to each voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before the election at which the *statewide* ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county who is on the active voter list, except that two or more voters with the

same mailing address and the same last name may be counted as one voter. The mailing label may include an address line that addresses the voter or the current resident. The mailing must take place no later than 30 days before the election.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the *statewide* ballot issues."

Section 48. Section 13-27-501, MCA, is amended to read:

"**13-27-501. Secretary of state to certify ballot form.** (1) The secretary of state shall furnish to the official of each county responsible for preparation of the ballots, at the same time as the election administrator certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each *statewide* ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) The secretary of state shall list for each ballot issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement, if applicable;

(e) the fiscal statement, if applicable;

(f) the statement of purpose and implication *if not otherwise listed as the title pursuant to [section 2]*;

(g) the yes and no ~~statements~~ *statement*; and

(h) a statement that the *statewide* ballot issue conflicts with one or more issues, referenced by number, that also appear on the ballot, if applicable.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition."

Section 49. Section 13-27-502, MCA, is amended to read:

"**13-27-502. Preparation of ballots with ballot issues.** (1) Each of the county officials responsible for the preparation of the ballots shall provide for the *statewide* ballot issues to appear on the official ballot in the form and order in which the *statewide ballot* issues have been certified by the secretary of state.

(2) All *statewide* ballot issues must be placed on the same official ballot as the candidates unless the secretary of state provides the election administrator with specific written approval for separate ballots. The secretary of state may issue an approval only when the number of *statewide ballot* issues to be voted on at an election makes it impractical to print the entire ballot, including the *statewide* ballot issues, on the same official ballot as the candidates."

Section 50. Section 13-27-503, MCA, is amended to read:

"**13-27-503. Determination of result of election.** The votes on *statewide* ballot issues must be counted, canvassed, and certified in the same manner as votes for candidates are counted, canvassed, and certified. The abstract of votes on *statewide* ballot issues must be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. At the same time as the votes for state officers are canvassed,

the board of state canvassers shall proceed to canvass the votes given for each *statewide* ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in the secretary of state's office a statement of the canvass, giving the number and title of each *statewide ballot* issue, the whole number of votes cast in the state for and against each *statewide* ballot issue, and the effective date of each *statewide* ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor."

Section 51. Section 13-27-504, MCA, is amended to read:

"**13-27-504. Copy of approved issues to be sent to legislative services division.** The secretary of state shall send a certified copy of all *statewide* ballot issues that have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the legislative services division at the same time that a certified copy of the statement of the canvass is transmitted to the governor."

Section 52. Section 13-37-126, MCA, is amended to read:

"**13-37-126. Names not to appear on ballot -- *statewide initiative not to appear on ballot.*** (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by 2-2-106 or this chapter.

(2) A vacancy on an official ballot under ~~this section~~ *subsection (1)* may be filled in the manner provided by law, but not by the same candidate.

(3) *A statewide initiative may not appear on the official ballot for an election if the treasurer for the primary ballot committee supporting the statewide initiative fails to file any report as required by this chapter.*

(4) A vacancy on an official ballot under subsection (3) may not be filled.

(5) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state and the election administrator conducting an election when a candidate or a candidate's treasurer has not complied with 2-2-106 or *when a candidate or candidate's treasurer or the treasurer for the primary ballot committee supporting a statewide initiative has not complied with* the provisions of this chapter and that the candidate's name *or the statewide initiative* may not appear on the official ballot.

(b) The commissioner shall provide the notification:

(i) 2 calendar days before the certification deadline provided in 13-10-208 for statewide primary elections and 20-20-401 for school district elections; and

(ii) 7 days before the certification deadline provided in 13-12-201 for general elections."

Section 53. Section 13-37-201, MCA, is amended to read:

"**13-37-201. Campaign treasurer.** (1) Except as provided in 13-37-206, each candidate, each political committee, and each joint fundraising committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section.

(2) (a) A candidate shall file the certification within 5 days after becoming a candidate.

(b) Except as provided in subsection (2)(c), a political committee and a joint fundraising committee shall file the certification, which must include an organizational statement and the name and address of all officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. A joint fundraising committee shall also provide a list of participants with the certification.

(c) A political committee that is seeking to place a ballot issue before the electors shall file the certification, including the information required in subsection (2)(b), within 5 days after the ~~issue becomes a ballot issue, as~~

~~defined in 13-1-101(6)(b)~~ *proposed issue is submitted to the secretary of state under [section 4].*

(3) The certification of a candidate, political committee, or joint fundraising committee must be filed with the commissioner."

Section 54. Section 13-37-228, MCA, is amended to read:

"**13-37-228. Time periods covered by reports.** Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate, political committee, or joint fundraising committee from the time that a person became a candidate a political committee, as defined in 13-1-101, or a joint fundraising committee, as provided in 13-37-211, until the 5th day before the date of filing of the appropriate initial report pursuant to 13-37-226. Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time ~~an~~ *a proposed* issue ~~becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by~~ *is submitted to* the secretary of state *in [section 4]* even if the issue subsequently fails to *complete the review process or fails to* garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226. For the purposes of this subsection, the reports required under 13-37-226(1)(c), (1)(d), (2)(c), and (2)(d) are not periodic reports and must be filed as required by 13-37-226(1)(c), (1)(d), (2)(c), and (2)(d), as applicable.

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate, political committee, or joint fundraising committee. A candidate, political committee, or joint fundraising committee shall file a closing report following an election in which the candidate, political committee, or joint fundraising committee participates whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign unless the election is a primary election and the candidate, political committee, or joint fundraising committee will participate in the general election.

(4) If all debts and obligations are satisfied and further contributions or expenditures will not be received or made, a joint fundraising committee may file a closing report at any time."

Section 55. Section 30-18-103, MCA, is amended to read:

"**30-18-103. Scope.** (1) Except as otherwise provided in subsection (2), this part applies to electronic records and electronic signatures relating to a transaction.

(2) This part does not apply to a transaction to the extent it is governed by:

(a) a law governing the creation and execution of wills, codicils, or testamentary trusts; ~~and~~

(b) Title 30, chapter 1, other than 30-1-107, and chapters 3 through 9A~~.~~*; and*

(c) Title 13.

(3) This part applies to an electronic record or electronic signature otherwise excluded from the application of this part under subsection (2) to the extent it is governed by a law other than those specified in subsection (2).

(4) A transaction subject to this part is also subject to other applicable substantive law."

Section 56. Repealer. The following sections of the Montana Code Annotated are repealed:

13-27-111. Definitions.
13-27-113. Powers and duties of commissioner.
13-27-202. Recommendations -- registration by paid signature gatherers -- approval of form required.
13-27-208. Petitions to be made available in each county election administrator's office.
13-27-312. Review of proposed ballot issue and statements by attorney general -- preparation of fiscal note.
13-27-315. Statements by attorney general on issues referred by legislature.

Section 57. Directions to code commissioner. (1) Sections 13-1-121 and 13-27-316 are intended to be renumbered and codified in Title 13, chapter 2.

(2) The code commissioner may renumber existing statutes in Title 13, chapter 27, part 2, in the same part for consistency and clarity with [sections 1 through 16].

Section 58. 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 59. Codification instruction. [Sections 1 through 16] are intended to be codified as an integral part of Title 13, chapter 27, part 2, and the provisions of Title 13, chapter 27, part 2, apply to [sections 1 through 16].

Section 60. Effective date. [This act] is effective on passage and approval.

Section 61. 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 62. Applicability. (1) [This act] applies to statewide ballot issues submitted to the secretary of state on or after [the effective date of this act].

(2) [This act] applies to ballot issues submitted to the county election administrator for approval of the form of the petition required by 7-5-132 on or after [the effective date of this act].

(3) [This act] applies to a petition prepared pursuant to 7-7-2224 that is filed with the election administrator under 7-7-2225 on or after [the effective date of this act].

Approved May 19, 2023

CHAPTER NO. 648

[SB 94]

AN ACT PROVIDING REQUIREMENTS AND PROHIBITING CERTAIN PRACTICES FOR RECOVERY RESIDENCES; CREATING A REGISTRY OF RECOVERY RESIDENCES IN MONTANA; REQUIRING CERTIFICATION FOR A RECOVERY RESIDENCE TO RECEIVE RENTAL VOUCHERS AND TRANSITIONAL ASSISTANCE FUNDS FROM THE DEPARTMENT OF CORRECTIONS; PROVIDING DEFINITIONS; AMENDING SECTION 46-23-1041, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montanans facing addiction deserve the highest quality of care and support; and

WHEREAS, recovery residences can provide a healthy, sober living environment that helps individuals with substance use disorders achieve and maintain sobriety; and

WHEREAS, it is crucial that recovery residences implement best practices and sound operating procedures that enable and empower residents to gain access to community support, public services, and therapeutic treatments to advance their recovery and develop independence.

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

Section 1. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Alcohol and drug prevention or treatment facility" means a recovery residence, hospital, health or counseling center, or other entity providing alcohol and drug services.

(2) "Alcohol and drug services" includes evaluation, treatment, residential personal care, habilitation, rehabilitation, counseling, or supervision of persons with substance use disorders or services to persons designed to prevent substance use disorders that either receive funds from the department of public health and human services or assess fees for services provided.

(3) "Certified recovery residence" means a recovery residence, as defined in subsection (9), that has received certification or another form of approval from a certifying organization, as defined in subsection (4).

(4) "Certifying organization" means a recovery residence standards organization or an affiliate of a recovery residence standards organization that operates in the state of Montana and is recognized by the department of public health and human services.

(5) "Informed consent" means voluntary consent by an individual to a placement in a certified recovery residence only after full disclosure by a judge, justice of the peace, or magistrate of the following information:

(a) any limitations or prohibitions against narcotic medication associated with the certified recovery residence; and

(b) whether United States food and drug administration-approved medication-assisted treatment of substance use disorders, including the use of buprenorphine and suboxone, is limited or prohibited.

(6) "Levels of care" means the continuum of support ranging from nonclinical recovery residences to licensed clinical treatment.

(7) "Minor" means an individual under 18 years of age without regard to sex.

(8) "Qualified health care provider" means a person licensed as a physician, psychologist, social worker, clinical professional counselor, marriage and family therapist, addiction counselor, or another appropriate licensed health care practitioner.

(9) "Recovery residence" means a sober living home with a safe, family-like environment that promotes recovery from substance use disorders through services including but not limited to peer support, mutual support groups, and recovery services.

(10) "Sober" means free of alcohol and drugs, except for prescription medications taken as directed by a licensed prescriber, including medications approved by the United States food and drug administration for the treatment of opioid use disorder.

(11) (a) "Substance use disorder" means the use of any chemical substance, legal or illegal, that creates behavioral or health problems, or both, resulting in operational impairment.

(b) This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, safety, or welfare.

Section 2. Recovery residence requirements. (1) A recovery residence must register with the department of public health and human services.

(2) A recovery residence may seek certification from a certifying organization.

(3) A recovery residence must have policies and protocols for the following:

(a) administrative oversight;

(b) quality standards, including if the recovery residence limits or prohibits the use of narcotic medication;

(c) its residents;

(d) emergencies, including fire, natural disasters, and health emergencies, including overdose; and

(e) eviction of a resident, including the return of the resident's personal effects and property.

(4) A recovery residence must meet state and municipal requirements that apply to a residence's dwelling size and occupancy, including but not limited to safety requirements, building codes, zoning regulations, and local ordinance requirements.

(5) A recovery residence must keep opioid-overdose drugs on site in an easily accessible place and train staff and residents on the use of opioid-overdose drugs.

(6) Minor children of residents may reside with their parent in a certified recovery residence if allowed in the residence's policies and protocols and if the residence maintains an environment consistent with the welfare of minor residents.

(7) The recovery residence may not limit a resident's duration of stay to an arbitrary or fixed amount of time unless all transition and completion dates are agreed on by both parties at the time of admission. Each resident's duration of stay is determined by the resident's needs, progress, and willingness to abide by the recovery residence's protocols in collaboration with the recovery residence's owner and operator and, if appropriate, in consultation with a qualified health care provider.

(8) The recovery residence may permit residents to receive medication-assisted treatment.

(9) (a) Each recovery residence shall provide an annual compliance report to the certifying organization, including a description of any programming and services designed to reduce recidivism and facilitate rehabilitation among residents during the year covered by the report and the number of residents for whom such services were provided.

(b) The certifying organization shall provide an annual compliance report, including a description of any programming and services designed to reduce recidivism and facilitate rehabilitation among residents during the year covered by the report and the number of residents for whom such services were provided, in accordance with 5-11-210, to the criminal justice oversight council.

Section 3. Recovery residence prohibitions. (1) The operator or staff of a recovery residence may not:

(a) make a materially false or misleading statement or provide materially false or misleading information about the residence's identity, products, goods, services, or geographical locations in its marketing and advertising materials, media, and website;

(b) include on a website false information or electronic links, coding, or activation that provides false information or that surreptitiously directs the reader to another website;

(c) solicit, receive, or make an attempt to solicit or receive a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, in return for a referral or an acceptance or acknowledgement of treatment from a qualified health care provider, provider of alcohol and drug services, or alcohol and drug prevention or treatment facility;

(d) engage or make an attempt to engage in a split-fee arrangement in return for a referral or an acceptance or acknowledgement of treatment from a qualified health care provider, provider of alcohol and drug services, or alcohol and drug prevention or treatment facility; or

(e) enter into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a qualified health care provider, provider of alcohol and drug services, or alcohol and drug prevention or treatment facility through a call center or a web-based presence unless this contract is disclosed to the prospective patient or resident.

(2) In addition to any other penalty authorized by law, a recovery residence that knowingly violates this section is subject to prosecution and penalties pursuant to the Montana Consumer Protection Act, Title 30, chapter 14, part 1.

Section 4. Powers and duties of department of public health and human services -- annual county report. (1) The department of public health and human services shall:

(a) maintain a registry of recovery residences in the state;

(b) include on its website a public-facing list of certifying organizations that operate in the state and are recognized by the department;

(c) include on its website a public-facing list of recovery residences in the state that indicates which recovery residences are certified recovery residences; and

(d) ensure that it supports several sets of certification standards from various certifying organizations to accommodate various program models.

(2) (a) By the date and on a form prescribed by the department, each county shall submit to the department an annual report of known recovery residences in the county.

(b) A report must contain the following information for each known recovery residence:

(i) the name of the recovery residence;

(ii) the physical and mailing addresses of the recovery residence;

(iii) the name and contact information of the owner of the recovery residence; and

(iv) additional information when available, including:

(A) the name and contact information of the recovery residence manager or other leadership staff;

(B) the population served by the recovery residence;

(C) whether the recovery residence limits or prohibits the use of narcotic medication; and

(D) other information the county considers pertinent.

(3) As permitted by federal and state law, the department shall post the location or physical address of a recovery residence on the department's website.

Section 5. Preferential placement at and referral to certified recovery residences -- informed consent required for placement in certain certified recovery residences. (1) The department of corrections shall establish a preference for certified recovery residences by encouraging and assisting appropriate individuals seeking placements in recovery residences.

(2) (a) A judge, justice of the peace, or magistrate may not refer an individual to an uncertified recovery residence.

(b) (i) A judge, justice of the peace, or magistrate shall refer an individual to at least two recovery residences, one of which must support United States food and drug administration-approved medication-assisted treatment of substance use disorders.

(ii) A judge, justice of the peace, or magistrate may not refer an individual to a certified recovery residence that does not permit the individual to receive treatment or take medication prescribed by a qualified health care provider without the informed consent of the individual who is subject to the referral.

(c) In addition to the requirements of subsection (2)(b), when referring an individual to a recovery residence, a qualified health care provider, judge, justice of the peace, or magistrate shall consider the:

(i) culture of the recovery residence, including but not limited to the permissiveness of unhealthy behaviors, current residents' commitment to recovery and support of other residents, requirements and support to attend and seek clinical treatment and outside nonclinical sobriety support, and the general living environment;

(ii) geographic area, neighborhood, or external surrounding environment of the recovery residence;

(iii) physical living environment of the recovery residence;

(iv) level of training and professionalism of residence staff;

(v) recovery residence's reputation regarding ethical business practices, which may include but is not limited to fraud and abuse of residents;

(vi) recovery residence's relapse policy; and

(vii) availability of opioid-overdose reversal drugs.

(3) Any judge, magistrate, or justice of the peace who violates subsection (2)(a) is subject to disciplinary action by the judicial standards commission pursuant to Title 3, chapter 1, part 11.

(4) Subsection (2)(a) does not otherwise limit the referral options available for a person in recovery from a substance use disorder to any other appropriate placements or services.

Section 6. Section 46-23-1041, MCA, is amended to read:

"**46-23-1041. Rental vouchers.** (1) If the department does not approve an offender's parole plan because the offender is unable to secure suitable living arrangements, the department may provide rental vouchers to the offender for a period not to exceed 3 months if the rental assistance will result in an approved parole plan.

[(2) The department shall provide a rental voucher to a claimant if required by 46-32-106(7).]

(3) The voucher [provided pursuant to subsection (1)] must be provided in conjunction with additional transition support that enables the offender to participate in programs and services, including but not limited to substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming.

(4) To receive rental vouchers and transitional assistance funds from the department of corrections, a recovery residence must:

(a) be a certified recovery residence, as defined in [section 1(3)];

(b) notify a resident's probation or parole officer within 24 hours of the resident moving out, if a resident is on probation or parole when the resident moves out of the recovery residence; and

(c) permit residents to receive treatment and take medication prescribed by a qualified health care provider. The provisions of this subsection (4)(c) do not include a recovery residence or program that limits or prohibits the

use of narcotic medication in order to provide a safe recovery environment to individuals who may be addicted to legal medication. The recovery residence or program shall report this practice as required in [sections 2(3)(b) and 4] (Bracketed language terminates June 30, 2023--sec. 15, Ch. 574, L. 2021.)"

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 53, chapter 24, part 3, and the provisions of Title 53, chapter 24, part 3, apply to [sections 1 through 5].

Section 8. Legislative intent for department of justice enforcement. It is the intent of the legislature that the department of justice implement the provisions of [section 3(2)] within existing resources.

Section 9. Effective date. [This act] is effective October 1, 2023.

Approved May 19, 2023

CHAPTER NO. 649

[SB 96]

AN ACT CREATING A SEPARATE DEFINITION FOR A PERSISTENT FELONY OFFENDER UNDER SUPERVISION; AND AMENDING SECTIONS 46-1-202, 46-13-108, AND 46-18-502, MCA.

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

Section 1. Section 46-1-202, MCA, is amended to read:

"**46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(2) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(3) "Arrest" means taking a person into custody in the manner authorized by law.

(4) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(5) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(6) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(7) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon 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.

(8) "Court" means a place where justice is judicially administered and includes the judge of the court.

(9) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) "Judge" means a person who is vested by law with the power to perform judicial functions.

(11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(15) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

(17) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

(18) "Persistent felony offender" means an offender who has previously been convicted of two separate felonies and who is presently being sentenced for a third felony committed on a different occasion than either of the first two felonies*, except for an offender who was on conditional release, felony probation, or felony parole at the time the felony for which the offender is presently being sentenced was committed*. At least one of the three felonies must be a sexual offense or a violent offense as those terms are defined in 46-23-502. An offender is considered to have previously been convicted of two separate felonies if:

(a) the two previous felonies were for offenses that were committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the most recent of the two felony convictions; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at a postconviction hearing.

(19) (a) "Persistent felony offender under supervision" means an offender who:

(i) was on conditional release, felony probation, or felony parole at the time the offense for which the offender is presently being sentenced was committed;

(ii) has previously been convicted of two separate felonies; and

(iii) is presently being sentenced for a third felony, except as provided in subsection (19)(c).

(b) An offender is considered to have previously been convicted of two separate felonies if:

(i) the two previous felonies were for offenses that were committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(ii) less than 5 years have elapsed between the commission of the present offense and either:

(A) the most recent of the two felony convictions; or

(B) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(iii) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at a postconviction hearing.

(c) A third felony may not include criminal possession of dangerous drugs pursuant to 45-9-102, a fourth or subsequent offense of driving under the influence pursuant to 61-8-1002, or failure to register pursuant to Title 46, chapter 23.

~~(19)~~*(20)* "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

~~(20)~~*(21)* "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

~~(21)~~*(22)* "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

~~(22)~~*(23)* "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

~~(23)~~*(24)* "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

~~(24)~~*(25)* "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

~~(25)~~*(26)* "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty.

~~(26)~~*(27)* "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

~~(27)~~*(28)* "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

~~(28)~~*(29)* "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

~~(29)~~*(30)* "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

~~(30)~~*(31)* "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

~~(31)~~*(32)* "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

Section 2. Section 46-13-108, MCA, is amended to read:

"**46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except for good cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender *or a persistent felony offender under supervision*, notice of that fact must be given at or before the omnibus hearing pursuant to 46-13-110.

(2) The notice must specify the alleged prior convictions and may not be made known to the jury before the verdict is returned except as allowed by the Montana Rules of Evidence.

(3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a hearing to determine if the allegations in the notice are true.

(4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior convictions are true, the accused must be sentenced as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo contendere is given by the defendant."

Section 3. Section 46-18-502, MCA, is amended to read:

"**46-18-502. Sentencing of persistent felony offender.** (1) Except as provided in 46-18-219 and subsection (2) of this section, a persistent felony offender *or a persistent felony offender under supervision* shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if the offender was 21 years of age or older at the time of the commission of the present offense.

(2) Except as provided in 46-18-219, an offender shall be imprisoned in a state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if:

(a) the offender was a persistent felony offender *or a persistent felony offender under supervision*, as defined in 46-1-202, at the time of the offender's previous felony conviction;

(b) less than 5 years have elapsed between the commission of the present offense and:

(i) the previous felony conviction; or

(ii) the offender's release on parole, from prison, or from other commitment imposed as a result of the previous felony conviction; and

(c) the offender was 21 years of age or older at the time of the commission of the present offense.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) of this section or the first

10 years of a sentence imposed under subsection (2) of this section may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed."

Approved May 19, 2023

CHAPTER NO. 650

[SB 104]

AN ACT REVISING STATE INCOME TAXATION FOR MILITARY PENSIONS, RETIREMENT, AND SURVIVOR BENEFITS; EXEMPTING A PORTION OF MILITARY PENSIONS OR RETIREMENT INCOME AND SURVIVOR BENEFITS FROM INCOME TAXATION; PROVIDING THE EXEMPTION TO RETIRED MEMBERS OF THE ARMED FORCES, A RESERVE COMPONENT, OR THE NATIONAL GUARD THAT BECOME A RESIDENT OF THE STATE OR REMAINS A RESIDENT AFTER RECEIVING CERTAIN RETIREMENT BENEFITS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2120, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

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

Section 1. Section 15-30-2120, MCA, is amended to read:

"**15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;

(b) 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;

(c) depreciation or amortization taken on a title plant as defined in 33-25-105;

(d) 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;

(e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;

(f) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661;

(g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;

(i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction claimed; and

(j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not to exceed the amount required to reduce the federal itemized amount computed under section 161 of the Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

(3) To the extent they are included as income or gain or not already excluded as a deduction or expense in determining federal taxable income, the following are subtracted from federal taxable income:

(a) a deduction for an income distribution from an estate or trust to a beneficiary in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the additions and subtractions in subsections (2) and (3)(b) through ~~(3)(m)~~ *(3)(n)*;

(b) if exempt from taxation by Montana under federal law:

(i) interest from obligations of the United States government and exempt-interest dividends attributable to that interest; and

(ii) railroad retirement benefits;

(c) (i) salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana;

(ii) the salary received by residents of Montana for active duty in the national guard. For the purposes of this subsection (3)(c)(ii), "active duty" means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10, U.S.C.; or

(B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

(iii) the amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;

(iv) the amount received by a beneficiary pursuant to 10-1-1201; and

(v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(d) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

(e) contributions or earnings withdrawn from a family education savings account provided for in Title 15, chapter 62, or from a qualified tuition

program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(f) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(g) for each taxpayer that has attained the age of 65, an additional subtraction of $5,500;

(h) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104;

(i) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1;

(j) the amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Montana income tax purposes;

(k) 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;

(l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing federal taxable income; ~~and~~

(m) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163*; and*

(n) (i) subject to subsection (9), a portion of military pensions or military retirement income as calculated pursuant to subsection (8) that is received by a retired member of:

(A) the armed forces of the United States, as defined in 10 U.S.C. 101;

(B) the Montana army national guard or the army national guard of other states;

(C) the Montana air national guard or the air national guard of other states; or

(D) a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces; and

(ii) subject to subsection (9), up to 50% of all income received as survivor benefits for military service provided for in subsection (3)(n)(i)(A) through (3)(n)(i)(D).

(4) (a) A taxpayer who, in determining federal taxable 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) (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 in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce taxable 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 taxable income under this subsection (5)(a) 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 (2)(d) do not apply with respect to withdrawals of contributions that reduced federal taxable income.

(b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for in 15-62-208.

(6) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce taxable 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 taxable income under this subsection (6)(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 (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

(b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in 53-25-118.

(7) By November 1 of each year, the department shall multiply the subtraction from federal taxable income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for that tax year, rounding the result to the nearest $10. The resulting amount is effective for that tax year and must be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g).

(8) (a) Subject to subsection (9), the subtraction in subsection (3)(n)(i) is equal to the lesser of:

(i) the amount of Montana source wage income on the return; or

(ii) 50% of the taxpayer's military pension or military retirement income.

(b) For the purposes of subsection (8)(a)(i), "Montana source wage income" means:

(i) wages, salary, tips, and other compensation for services performed in the state;

(ii) net income from a trade, business, profession, or occupation carried on in the state; and

(iii) net income from farming activities carried on in the state.

(9) The subtractions in subsection (3)(n):

(a) may only be claimed by a person who:

(i) becomes a resident of the state after June 30, 2023; or

(ii) was a resident of the state before receiving military pension or military retirement income and remained a resident after receiving military pension or military retirement income;

(b) may only be claimed for 5 consecutive years after satisfying the provisions of subsection (9)(a); and

(c) are not available if a taxpayer claimed the exemption before becoming a nonresident."

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

(2) [Section 1] is effective January 1, 2024.

Section 3. Applicability. [This act] applies to military retirement or pension income or survivor benefits received after December 31, 2023.

Section 4. Termination. [Section 1] terminates December 31, 2033.

Approved May 19, 2023

CHAPTER NO. 651

[SB 116]

AN ACT REVISING LAWS REGARDING THE DISCLOSURE OF CHILD ABUSE AND NEGLECT RECORDS; REVISING PROCEDURES FOR DISCLOSING CASE RECORDS AND RECORDS OF THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN TO A MEMBER OF CONGRESS OR THE MONTANA LEGISLATURE; PROVIDING EXCEPTIONS TO CONFIDENTIALITY REQUIREMENTS FOR RECORDS DISCLOSED TO A MEMBER OF CONGRESS OR THE MONTANA LEGISLATURE; AMENDING SECTIONS 41-3-205 AND 41-3-1214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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~~ *must, upon request,* be disclosed to the following persons or entities in this state and any other state or country:

~~(a)~~*(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)~~*(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)~~*(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)~~*(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)~~*(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)~~*(f)* the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

~~(g)~~*(g)* approved foster and adoptive parents who are or may be providing care for a child;

~~(h)~~*(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)~~*(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)~~*(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)~~*(k)* the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family engagement meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

~~(l)~~*(l)* the coroner or medical examiner when determining the cause of death of a child;

~~(m)~~*(m)* a child fatality review team recognized by the department;

~~(n)~~*(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)~~*(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)~~ *(3)(o)* must be made in writing. Disclosure under this subsection ~~(3)(o)~~ *(3)(o)* is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

~~(p)~~*(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)~~*(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)~~*(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)~~*(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)~~*(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)~~*(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)~~*(v)* a school employee participating in an interview of a child by a child protection specialist, county attorney, or peace officer, as provided in 41-3-202;

~~(w)~~*(w)* a member of a county or regional interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

~~(x)~~*(x)* members of a local interagency staffing group provided for in 52-2-203;

~~(y)~~*(y)* a member of a youth placement committee formed under the provisions of 41-5-121; or

~~(z)~~*(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. *The orientation must include a checklist of documents that are regularly included in records, including but not limited to the following:*

(I) any petition filed pursuant to Title 41, chapter 3, part 4, including any supporting affidavits and evidence;

(II) any court orders issued pursuant to Title 41, chapter 3, parts 4 and 6;

(III) notes from family engagement meetings and foster care review meetings; and

(IV) notes included in electronic case records or in case files maintained in local offices regarding staffing and interactions with parents or legal guardians, providers, or attorneys.

(b) *(i) Without disclosing the identity of a person who reported the alleged child abuse or neglect, the department shall make available to the member all records concerning the child who is the subject of the written inquiry.*

(ii) ~~Records~~ *Except as provided in subsection (4)(b)(iii), records* disclosed pursuant to *this* subsection (4)~~(a)~~ are confidential, ~~must be made available for the member to view but~~ may not be copied, ~~recorded,~~ photographed, or

otherwise replicated by the member, and must remain solely in the department's possession. The member must be allowed to view the records in the local office where the case is or was active.

(iii) A member may take notes to discuss the records with a parent or legal guardian about whom a report of alleged child abuse or neglect is made.

(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.

(d) (i) Except as provided in subsection (5)(d)(ii), the records described in subsection (3) must be released within 5 business days to the county attorney of the county in which the acts that are the subject of a report occurred upon the department's receipt of a report that includes an allegation of sexual abuse or sexual exploitation. The department shall also report to any other appropriate individual described in subsection (5)(a) and to a county or regional interdisciplinary child information and school safety team established pursuant to 52-2-211.

(ii) If the exception in 41-3-202(1)(b) applies, a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault shall report to the department as provided in this part without disclosing the

names of the victim and the alleged perpetrator of sexual abuse or sexual exploitation.

(iii) When a contractor described in 41-3-201(2)(j) that provides confidential services to victims of sexual assault provides services to youth over the age of 13 who are victims of sexual abuse and sexual exploitation, the contractor may not dissuade or obstruct a victim from reporting the criminal activity and, upon a request by the victim, shall facilitate disclosure to the county attorney and a law enforcement officer as described in Title 7, chapter 32, in the jurisdiction where the alleged abuse occurred.

(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)*, (4)(b)(iii),* 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."

Section 2. Section 41-3-1214, MCA, is amended to read:

"**41-3-1214. Legislator access to ombudsman records.** (1) Records of ombudsman investigations, including case notes, correspondence, and interviews, must be disclosed to a member of the legislature if:

(a) the legislator receives a written request from a person who has requested assistance from the ombudsman about whether laws protecting children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

(b) the legislator submits a written request to the ombudsman asking to review the records relating to the written inquiry. The legislator's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the ombudsman in locating the records.

(c) before reviewing the records, the legislator:

(i) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(ii) receives from the ombudsman an orientation of the content and structure of the records.

(2) *(a)* ~~Records~~ *Except as provided in subsection (2)(b), records* disclosed pursuant to this section are confidential.~~,~~ *Records* must be made available for the member to view but may not be copied, ~~recorded,~~ photographed, or otherwise replicated by the member, and must remain solely in the ombudsman's possession. The records may be viewed at any office maintained by the office of the child and family ombudsman.

(b) A member may take notes in order to discuss the records with the party who submitted the written inquiry to the member."

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

Approved May 19, 2023

CHAPTER NO. 652

[SB 122]

AN ACT REVISING THE TAXATION OF CIGARS; PROVIDING THE PREMIUM CIGAR TAX MAY NOT EXCEED A SPECIFIC AMOUNT FOR EACH PREMIUM CIGAR; DEFINING "PREMIUM CIGAR"; AMENDING SECTIONS 16-11-102 AND 16-11-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 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 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 of persons, or other business entity, however formed.

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

~~(a)~~*(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)~~ *(2)(a)(i)*.

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

~~(c)~~*(c)* "Directory" means the tobacco product directory as provided in 16-11-504.

~~(d)~~*(d)* "Full face value of insignia" means the total amount of the tax levied under this part.

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

~~(f)~~*(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)~~*(g)* "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person must be treated as a wholesaler.

~~(h)~~*(h)* "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

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

~~(j)~~*(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)~~(*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) (i) "Premium cigar" means any roll of tobacco that is hand wrapped in 100% whole tobacco leaf, is not wrapped by a machine, and does not contain a filter, tip, or any characterizing nontobacco flavor.

(ii) The term does not include a cigarette.

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

~~(m)~~*(n)* "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)~~*(o)* "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)~~*(p)* "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)~~*(q)* "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)~~*(r)* "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)~~*(s)* "Tobacco product" means cigarettes and all other products containing tobacco that are intended for human consumption or use.

~~(s)~~*(t)* (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)~~*(u)* "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)~~*(v)* "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 2. Section 16-11-111, MCA, is amended to read:

"**16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is $1.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each

Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

(7) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price, to the wholesaler, of all tobacco products other than cigarettes*, premium cigars,* and moist snuff. *The tax on a premium cigar is the lesser of 50% of the wholesale price or 35 cents a premium cigar.* The tax on moist snuff is 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

(8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in 15-1-216.

(9) A retailer who purchases tobacco products for resale on which the tobacco products tax has not been collected and paid to the department shall comply with all the provisions of this part and the rules adopted to implement this part as if it were a wholesaler.

(10) A retailer must assume that the tobacco products tax has not been collected and paid to the department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states that the applicable Montana tobacco products tax is included in the total billing cost."

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

Section 4. Applicability. [This act] applies to premium cigars sold by a wholesaler after June 30, 2023.

Approved May 19, 2023

CHAPTER NO. 653

[SB 123]

AN ACT REQUIRING THE BALLOT FOR A BOND ELECTION TO INCLUDE THE ESTIMATED ADDITIONAL PROPERTY TAXES IMPOSED ON A RESIDENCE; AMENDING SECTION 20-9-426, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Bond election -- impact on value. (1) Except as provided in subsection (2), the form of the ballot for a bond election must include an estimate of the impact of the election on homes valued at $100,000, $300,000, and $600,000 in terms of actual dollars in additional property taxes that would be imposed in the first year on residences with those values if the bond were to pass. The ballot may also include an estimate of the impact of the election on homes of any other value in the district, if appropriate.

(2) The taxing jurisdiction conducting the bond election may replace the estimate of the impact of the election on a home valued at $600,000 with an estimate of the impact of the election on a home of a different value.

Section 2. Section 20-9-426, MCA, is amended to read:

"**20-9-426. Preparation and form of ballots for bond election.** (1) The school district shall cause ballots to be prepared for all bond elections.

(2) All ballots must be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS--YES" if you wish to vote for the bond issue; if you are opposed to the -bond issue, make an X or similar mark in the square before the words "BONDS--NO".

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged, or impact aid revenue) bonds of this school district in the amount of..... dollars ($.....), payable semiannually, during a period not more than..... years, for the purpose..... (here state the purpose the same way as in the notice of election)?

If this bond is passed, based on the taxable value of the school district, the property taxes on a home with an assessed market value for tax purposes of $100,000 would increase by $..... in the first year, of $300,000 would increase by $..... in the first year, and of $600,000 would increase by $..... in the first year.

[ ] BONDS -- YES.

[ ] BONDS -- NO.

(3) The school district conducting the bond election may replace the estimate of the impact of the election on a home valued at $600,000 with an estimate of the impact of the election on a home of a different value."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 7, part 1, and the provisions of Title 7, chapter 7, part 1, apply to [section 1].

Section 4. Coordination instruction. If both House Bill No. 543 and [this act] are passed and approved, then [section 1 of House Bill No. 543] is void and [section 1 of this act] must be amended as follows:

Section 1. Bond election -- impact on value. *(1)* ~~The~~ *Except* as provided in subsection (2), the form of the ballot for a bond election must include ~~a statement~~*:*

(a) the statement that "an increase in property taxes may lead to an increase in rental costs"; and

(b) an estimate of the impact of the election on ~~a home~~ *homes* valued at $100,000*, $300,000,* and ~~a home valued at $200,000~~ *$600,000* in terms of actual dollars in additional property taxes that would be imposed in the first year on residences with those values if the bond were to pass. The ballot may also include ~~a statement~~ *an estimate* of the impact of the election on homes of any other value in the district, if appropriate.

(2) The taxing jurisdiction conducting the bond election may replace the estimate of the impact of the election on a home valued at $600,000 with an estimate of the impact of the election on a home of a different value.

Section 5. Coordination instruction. If both House Bill No. 543 and [this act] are passed and approved and if both contain a section that amends 20-9-426, then the sections amending 20-9-426 are void and 20-9-426 must be amended as follows:

"20-9-426. Preparation and form of ballots for bond election. (1) The school district shall cause ballots to be prepared for all bond elections.

(2) All ballots must be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS--YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS--NO".

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged, or impact aid revenue) bonds of this school district in the amount of..... dollars ($.....), payable semiannually, during a period not more than..... years, for the purpose..... (here state the purpose the same way as in the notice of election)?

If this bond is passed, based on the taxable value of the school district, the property taxes on a home with an assessed market value for tax purposes of $100,000 would increase by $..... in the first year, of $300,000 would increase by $..... in the first year, and of $600,000 would increase by $..... in the first year. An increase in property taxes may lead to an increase in rental costs.

[ ] BONDS -- YES.

[ ] BONDS -- NO.

(3) The school district conducting the bond election may replace the estimate of the impact of the election on a home valued at $600,000 with an estimate of the impact of the election on a home of a different value."

Section 6. Applicability. [This act] applies to bond elections held on or after [the effective date of this act].

Approved May 19, 2023

CHAPTER NO. 654

[SB 144]

AN ACT PROVIDING THAT HELMET REQUIREMENTS DO NOT APPLY TO AUTOCYCLES THAT ARE COMPLETELY ENCLOSED; AND AMENDING SECTION 61-9-417, MCA.

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

Section 1. Section 61-9-417, MCA, is amended to read:

"**61-9-417. Headgear required for minor motorcycle riders.** (1) ~~An~~ *(a) Except as provided in subsection (1)(b), an* operator and passenger under 18 years of age of a motorcycle or quadricycle operated ~~upon~~ *on* the streets or highways of this state shall wear protective headgear ~~upon~~ *on* the head. The headgear must meet standards established by the department of justice.

(b) This section does not apply to an operator and passenger of an autocycle as defined in 61-1-101 that is completely enclosed with a windshield, nonremovable doors, and a roof.

(2) A person may not operate a motorcycle upon a highway in the state unless all passengers under 18 years of age are in compliance with subsection (1)."

Approved May 19, 2023

CHAPTER NO. 655

[SB 148]

AN ACT REQUIRING LEGAL REPRESENTATION FOR CHILDREN IN CHILD ABUSE AND NEGLECT CASES; AND AMENDING SECTION 41-3-425, MCA.

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

Section 1. Section 41-3-425, MCA, is amended to read:

"**41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) ~~through (5)~~ *and (4)*, the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 ~~when a guardian ad litem is not appointed for the child or youth~~; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

~~(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.~~

~~(4)~~*(3)* When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

~~(5)~~*(4)* Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel."

Approved May 19, 2023

CHAPTER NO. 656

[SB 149]

AN ACT ESTABLISHING PENALTIES FOR FALSELY REPORTING CHILD ABUSE OR NEGLECT; AMENDING SECTIONS 41-3-203, 41-3-207, AND 45-7-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 41-3-203, MCA, is amended to read:

"**41-3-203. ~~Immunity~~ *Liability -- immunity* from liability -- ~~penalty for false reporting~~ *damages.*** (1) ~~Anyone~~ *Except as provided in subsection (2), anyone* investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose or provided information knowing the information to be false.

(2) Any person who knowingly makes a false report or allegation of child abuse, abandonment, or neglect or makes a report in bad faith is liable to the party or parties against whom the report was made for the amount of actual damages sustained or for statutory damages of $2,500, whichever is greater, plus attorney fees and costs. If the person acted with malicious purpose, the

court may award treble actual damages or treble statutory damages, whichever is greater.

~~(2)~~*(3)* A person who provides information pursuant to 41-3-201 or a person who uses information received pursuant to 41-3-205 to refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through employment or volunteer activities may have unsupervised contact with children and who may pose a risk to children is immune from civil liability unless the person acted in bad faith or with malicious purpose."

Section 2. Section 41-3-207, MCA, is amended to read:

"**41-3-207. ~~Penalty for~~ *Penalties* -- failure to report -- *false reporting*.** (1) Any person, official, or institution required by 41-3-201 to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by the act or omission.

(2) Except as provided in subsection (3), any person or official required by 41-3-201 to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from making a report is guilty of a misdemeanor.

(3) Any person or official required by 41-3-201 to report known or suspected sexual abuse or sexual exploitation who purposely or knowingly fails to report known sexual abuse or sexual exploitation of a child or purposely or knowingly prevents another person from making a report is guilty of a felony and 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) Any person who purposely or knowingly makes a written or verbal false report of suspected child abuse or neglect under 41-3-201 in bad faith or with malicious purpose is guilty of unsworn falsification to authorities as provided in 45-7-203."

Section 3. Section 45-7-203, MCA, is amended to read:

"**45-7-203. Unsworn falsification to authorities.** (1) A person commits an offense under this section if, with the purpose to mislead a public servant in performing an official function, the person:

(a) makes any written *or verbal* false statement that the person does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements from being misleading;

(c) submits or invites reliance on any writing that the person knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object that the person knows to be false.

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

Section 4. Coordination instruction. If both House Bill No. 461 and [this act] are passed and approved and House Bill No. 461 contains a section amending 45-7-203, then the section in House Bill No. 461 amending 45-7-203 is void.

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

Approved May 19, 2023

CHAPTER NO. 657

[SB 151]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES RELATING TO CHILD SUPPORT OBLIGATIONS IN CHILD ABUSE AND NEGLECT CASES; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Rulemaking authority for referral and assignment of child support obligations. (1) The department shall adopt rules that require an assignment of rights to child support to the state for children entering foster care only in very rare circumstances in which:

(a) there will be only positive or no adverse effects on the child; or

(b) the assignment will not impede successful achievement of the child's permanency plan.

(2) The rules may adopt a categorical exemption for all children entering foster care.

(3) The rules may reflect that securing an assignment of rights to child support for children entering foster care is not appropriate unless the parent or guardian is above a certain income level.

Section 2. Transition. The department of public health and human services shall adopt rules pursuant to [section 1] by September 1, 2023.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 1].

Section 4. Coordination instruction. If both House Bill No. 227 and [this act] are passed and approved, then [section 1 of this act] is void and must be replaced with:

Section 1. Rulemaking authority for management of court-ordered child support obligations. The department shall adopt rules to manage court-ordered child support to the state for children entering foster care as provided for in 41-3-446. Rules to manage child support:

(1) must have no adverse effects on the child; and

(2) may not impede successful achievement of the child's permanency plan."

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

Approved May 19, 2023

CHAPTER NO. 658

[SB 169]

AN ACT GENERALLY REVISING PUNITIVE DAMAGES LAWS; PROHIBITING THE PLEADING OF PUNITIVE DAMAGES IN AN INITIAL PLEADING; PROVIDING THAT A PUNITIVE DAMAGES AWARD BE EQUALLY DIVIDED BETWEEN THE INJURED PARTY AND THE STATE; REQUIRING PUNITIVE DAMAGES THAT ARE AWARDED TO THE STATE TO BE DEPOSITED IN THE GENERAL FUND; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 27-1-221, MCA, is amended to read:

"**27-1-221. Punitive damages -- liability -- proof -- award.** (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely ~~upon~~ *on* the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) A request for an award of punitive damages may not be contained within an initial pleading filed by a party with the court. At any time after the initial pleading is filed and discovery has commenced in the lawsuit, a party may move the court to allow the party to amend the pleading to assert a claim for punitive damages. The party making the motion may submit affidavits and documentation supporting the claim for punitive damages. A party opposing the motion may submit opposing affidavits and documentation. The court may not allow a party to assert a claim for punitive damages unless the affidavits and supporting documentation submitted by the party seeking punitive damages set forth specific facts supported by admissible evidence adequate to establish the existence of a triable issue on all elements of a punitive damages claim.

~~(5)~~*(6)* All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

~~(6)~~*(7)* Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

~~(7)~~*(8)* (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection ~~(7)(c)~~ *(8)(c)*. In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based ~~upon~~ *on* the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based ~~upon~~ *on* the same wrongful act; and

(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection ~~(7)(b)~~ *(8)(b)*. If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection ~~(7)(b)~~ *(7)(c)*.

(9) (a) The judge shall divide the award of punitive damages equally between the prevailing party and the state and shall enter judgment accordingly.

(b) Upon entry of a judgment awarding punitive damages, the prevailing party shall provide written notice of the judgment to the state through the attorney general.

(c) The costs of litigation related to the award of punitive damages may be deducted from the full award of punitive damages.

(d) Reasonable attorney fees related to the award of punitive damages may be deducted from the full award of punitive damages after costs, but attorney fees deducted from the state's share may not exceed 20% of the state's share of the award of punitive damages after costs.

(e) The award to the state must be deposited in the general fund.

(f) The state has no interest in or right to intervene at any stage of a judicial proceeding pursuant to this subsection (9) except to enforce or execute a judgment entered in favor of the state.

(g) This subsection (9) does not apply to an award of punitive damages of $200,000 or less.

(10) The jury may not be advised of the requirements under subsection (9) concerning the allocation of money received in payment of an award of punitive damages.

~~(8)~~*(11)* This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth.

(12) Subsections (9) and (10) do not apply to actions in which the state is a party."

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

Section 3. Applicability. [This act] applies to any actions filed on or after [the effective date of this act].

Approved May 19, 2023

CHAPTER NO. 659

[SB 182]

AN ACT CREATING AN INTERIM TASK FORCE TO STUDY THE DEPENDENCY AND NEGLECT COURT SYSTEM; SPECIFYING MEMBERS AND DUTIES; PROVIDING FOR CONTINGENT VOIDNESS; ESTABLISHING

REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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

Section 1. Task force on dependency and neglect court system. (1) There is a task force on dependency and neglect court systems.

(2) The task force consists of 12 members appointed as follows:

(a) two members of the house of representatives, one of whom must be appointed by the speaker of the house of representatives and one of whom must be appointed by the minority leader of the house of representatives;

(b) two members of the senate, one of whom must be appointed by the president of the senate and one of whom must be appointed by the minority leader of the senate;

(c) one district court judge appointed by the chief justice of the supreme court; and

(d) seven members appointed by the governor, none of whom may be a currently serving legislator, including:

(i) a county attorney or their representative;

(ii) a law enforcement officer;

(iii) a representative from the governor's office;

(iv) a tribal member with experience relating to the Indian Child Welfare Act;

(v) a member of the public having experience with the dependency and neglect court system;

(vi) a representative of the office of state public defender; and

(vii) a representative of the department of public health and human services.

(3) (a) Legislative members of the task force are entitled to receive compensation and expenses as provided in 5-2-302.

(b) A nonlegislative member of the task force who is not a full-time salaried officer or employee of the state or a political subdivision of the state is entitled to salary and expenses to the same extent as a legislative member.

(c) A member of the task force who is a full-time salaried officer or employee of the state or a political subdivision of the state is entitled to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503.

(5) The task force shall select a presiding officer and a vice presiding officer by majority vote. The presiding officer and the vice presiding officer must be legislative members.

(6) The legislative services division shall provide staff assistance to the task force. The legislative fiscal division and the judicial branch shall provide information on request.

Section 2. Task force duties. (1) The task force shall study dependency and neglect court proceedings to determine whether a separate dependency and neglect court system or the existing court system, with enhancements, would best serve children, families, and other participants involved in dependency and neglect court proceedings.

(2) The study must examine:

(a) a separate dependency and neglect court system, including but not limited to examining the following:

(i) alternative court systems that specialize in dependency and neglect cases;

(ii) structural issues related to a court specializing in dependency and neglect cases;

(iii) the manner for electing or appointing judges;

(iv) whether the dependency and neglect court system should be operated on a statewide, regional, or local basis;

(v) changes needed to the existing court system to facilitate a separate dependency and neglect court system;

(vi) the interaction between district courts and a separate dependency and neglect court;

(vii) funding; and

(viii) implementation of a separate dependency and neglect court; and

(b) the existing dependency and neglect court system, including but not limited to examining:

(i) changes that could be made to the current court system in place of creating a separate dependency and neglect court system;

(ii) the strengths and weaknesses of the district courts in handling dependency and neglect cases;

(iii) whether dependency and neglect specialty courts could exist on a local level;

(iv) the interaction between dependency and neglect cases and family law cases;

(v) whether there could be a more expanded role for family courts;

(vi) other local court issues that affect families or dependency and neglect cases;

(vii) the need for district court involvement in the addition or removal of a person's name from any registry maintained by the department of public health and human services regarding substantiated allegations of child abuse or neglect; and

(viii) funding.

(3) The task force shall involve input from the various stakeholders involved in dependency and neglect court proceedings and, to the extent possible, consult with outside experts about Montana's system and systems in other states.

(4) The task force 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 of 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 in 2-18-501 through 2-18-503.

(5) The task force may appoint working groups to study specific topics or issues as directed by the task force. If appointed, the working group shall meet regularly and report to the task force as the task force requires. The working group may include representatives of stakeholders that are not members of the task force.

(6) The task force may meet no more than 12 days.

(7) All aspects of the task force, including reporting requirements, must be concluded prior to September 15, 2024. The task force shall prepare a final report of its findings, conclusions, and recommendations and prepare draft legislation whenever appropriate. The task force shall submit the final report to the governor, the chief justice of the supreme court, and the 69th legislature.

Section 3. Appropriation. The following money is appropriated from the general fund to the legislative services division for the purposes established in [sections 1 and 2]:

Fiscal year 2024	$67,812
Fiscal year 2025	$13,219

Section 4. Contingent voidness. (1) Pursuant to Joint Rule 40-65, if [this act] does not include an appropriation prior to being transmitted to the governor, then [this act] is void.

(2) If the appropriation is vetoed, then [this act] is void.

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 2023.

Section 6. Termination. [This act] terminates June 30, 2025.

Approved May 19, 2023

CHAPTER NO. 660

[SB 195]

AN ACT REVISING STATE BUILDING CODES ADOPTED BY RULE; ALLOWING A PLACE OF RELIGIOUS WORSHIP TO USE ITS BUILDING SPACE FOR TEMPORARY OVERNIGHT VISITORS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 50-60-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-60-203, MCA, is amended to read:

"**50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.

(b) Rules concerning the conservation of energy must conform to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, except as provided in subsection (5), and may adopt rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances.

(5) The department may not include in the state building code a requirement for the installation of a fire sprinkler system in a single-family dwelling or a residential building that contains no more than two dwelling units.

(6) (a) The department shall, by rule, adopt by reference the most recently published edition of the national fire protection association's publication NFPA 99C for the installation of medical gas piping systems. The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of medical gas piping systems.

(b) A state, county, city, or town building code compliance officer shall, as part of any inspection, request proof of a medical gas piping installation endorsement from any person who is required to hold an endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement

violation to the inspector's employing agency, and the employing agency shall report the violation to the board of plumbers.

(7) (a) The department shall permit a place of religious worship to use its building space to accommodate temporary overnight visitors for the purpose of religious retreats, ministry programs, overnight events, and emergency or catastrophic occurrences or to provide shelter or to accommodate displaced persons due to hardship or inclement weather, provided that:

(i) a place of religious worship may not accommodate overnight visitors in the aggregate for more than 75 days in a calendar year unless the governor has declared a state of emergency pursuant to 10-3-303 or exigent circumstances exist;

(ii) a place of religious worship acting in accordance with this subsection (7) may not charge for the temporary accommodation of overnight visitors; and

(iii) a place of worship that temporarily accommodates overnight visitors as provided in this subsection (7) has one of the following:

(A) an automatic fire sprinkler system in the area used for temporary overnight accommodations that is monitored by a third party; or

(B) a hard-wired, stand-alone fire and smoke alarm in the area used for temporary overnight accommodations in addition to an exit door or window opening directly to a public way, exit court, or yard area.

(b) The use of places of religious worship that offer temporary overnight accommodations as allowed in subsection (7)(a) is not a change in occupancy, purpose, or use.

(c) A place of religious worship is not in violation of the state building code for the sole reason that the place of worship hosts temporary overnight visitors as allowed in subsection (7)(a).

(8) As used in this section, "place of religious worship" means a building or portion of a building that is intended for the performance of religious services classified as assembly group A-3 by the International Building Code as it read on January 1, 2023."

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

Approved May 19, 2023

CHAPTER NO. 661

[SB 209]

AN ACT REVISING LAWS RELATING TO MONTANA DISTILLERIES; REVISING HOURS OF OPERATION TO ALIGN WITH BREWERY SAMPLE ROOMS; AND AMENDING SECTION 16-4-312, MCA.

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

Section 1. Section 16-4-312, MCA, is amended to read:

"**16-4-312. Domestic distillery.** (1) A distillery located in Montana and licensed pursuant to 16-4-311 may:

(a) import necessary products in bulk;

(b) bottle, produce, blend, store, transport, or export liquor that it produces; *and*

(c) perform those operations that are permitted for bonded distillery premises under applicable regulations of the United States department of the treasury.

(2) (a) A distillery that is located in Montana and licensed pursuant to 16-4-311 shall sell liquor to the department under this code, and the department shall include the distillery's liquor as a listed product.

(b) The distillery may use a common carrier for delivery of the liquor to the department.

(c) A distillery that produces liquor within the state under this subsection (2) shall maintain records of all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and prices of liquor that it ships to the department and other information that the department may determine to be necessary to ensure that distribution of liquor within this state conforms to the requirements of this code.

(3) A microdistillery may:

(a) provide, with or without charge, not more than 2 ounces of liquor that it produces at the microdistillery to consumers for prepared servings*:*

(i) ~~though~~ *through* curbside pickup between 10 a.m. and 8 p.m.*; and*

(ii) ~~or consumption on the~~ *for on-*premises *consumption during the hours of operation that are identical to those allowed for a brewery license provided for in 16-3-213(2)(b) and corresponding administrative rules relating to the service, consumption, and possession of alcoholic beverages on the premises* ~~between 10 a.m. and 8 p.m.~~; or

(b) sell liquor in original packaging that it produces at retail at the distillery between the hours of 8 a.m. and 2 a.m. directly to the consumer, including curbside pickup, for off-premises consumption if:

(i) not more than ~~1.75~~ *4.5* liters a day is sold to an individual; and

(ii) the minimum retail price as determined by the department is charged."

Section 2. Transition. The department shall revise its administrative rules implementing 16-3-213 and 16-4-312 or any other applicable statute to include sample room hours of operations that are identical for Montana distilleries and breweries. The intent of this act is to make the hours of operation for service to and consumption and possession of alcohol by consumers at breweries and distilleries equal.

Approved May 19, 2023

CHAPTER NO. 662

[SB 219]

AN ACT REVISING WILDFIRE SUPPRESSION LAWS; PROVIDING DEFINITIONS REGARDING UNMANNED AERIAL VEHICLES AND WILDFIRE SUPPRESSION ACTIVITIES; REVISING THE OFFENSE OF OBSTRUCTION OF WILDFIRE SUPPRESSION ACTIVITIES; AMENDING SECTIONS 76-13-102, 76-13-112, 76-13-203, AND 76-13-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-13-102, MCA, is amended to read:

"**76-13-102. Definitions.** Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) "Conservation" means the protection and wise use of forest, range, water, and soil resources in keeping with the common welfare of the people of this state.

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

(3) "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those

areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(4) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

(5) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(6) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(7) "Person" means an individual, corporation, partnership, or association of any kind.

(8) "Recognized agency" means an agency organized for the purpose of providing fire protection and recognized by the department as giving adequate fire protection to lands in accordance with rules adopted by the department.

(9) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.

(10) "Unmanned aerial vehicle" means an aircraft that is operated without direct human intervention from, on, or within the aircraft.

(11) "Unmanned aerial vehicle system" means the entire system used to operate an unmanned aerial vehicle, including:

(i) the unmanned aerial vehicle;

(ii) communications equipment;

(iii) navigation equipment;

(iv) controllers;

(v) support equipment; and

(vi) autopilot functionality.

~~(10)~~*(12)* "Wildfire" means an unplanned, unwanted fire burning uncontrolled on wildland and consuming vegetative fuels.

~~(11)~~*(13)* "Wildfire season" means the period of each year beginning May 1 and ending September 30, inclusive.

(14) "Wildfire suppression activities" means any action, response, or effort by a recognized agency to contain, extinguish, or suppress a wildfire.

~~(12)~~*(15)* "Wildland" means an area in which development is essentially nonexistent, except for roads, railroads, powerlines, and similar facilities, and in which structures, if any, are widely scattered.

~~(13)~~*(16)* "Wildland fire" means a fire burning uncontrolled on forest lands.

~~(14)~~*(17)* "Wildland fire protection" means the work of prevention, detection, and suppression of wildland fires and includes training required to perform those functions.

~~(15)~~*(18)* "Wildland fire protection district" means a definite land area, the boundaries of which are fixed and in which wildland fire protection is provided through the medium of an agency recognized by the department.

~~(16)~~*(19)* "Wildland-urban interface" means the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels."

Section 2. Section 76-13-112, MCA, is amended to read:

"**76-13-112. Penalty for violation.** *(1)* Unless otherwise provided by this part or part 2, a person who violates this part or part 2 or any rule adopted pursuant to this part or part 2 is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or imprisonment in a county jail for not more than 6 months or both.

(2) Actions to prosecute criminal violations of this part or part 2 or any rule adopted pursuant to this part or part 2 must be conducted by the city attorney, county attorney, or attorney general."

Section 3. Section 76-13-203, MCA, is amended to read:

"**76-13-203. Extension of wildfire season.** In the event of excessive or great fire danger, the ~~period~~ *wildfire season* defined in ~~76-13-102(11)~~ *76-13-102* may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice."

Section 4. Section 76-13-214, MCA, is amended to read:

"**76-13-214. Obstruction of *aerial* ~~aerial~~ wildfire suppression ~~effort~~ *activities* -- penalty -- exceptions.** (1) A person may not obstruct, impede, prevent, or otherwise interfere with ~~a~~ lawful *aerial* ~~aerial~~ wildfire suppression ~~response by a state or local government effort~~ *activities* by any means, including by the use of an unmanned aerial vehicle system.

(2) A person who violates subsection (1) is ~~liable for a civil penalty to the state or local government for an amount equivalent to the reasonable costs of obstructing, impeding, preventing, or interfering with an aerial wildfire suppression response effort. The penalty may not exceed the actual flight costs of the aerial wildfire suppression response effort that was obstructed, impeded, prevented, or interfered with~~ *guilty of a misdemeanor and shall be punished by a fine of not more than $1,500.*

~~(3)~~*(3) (a)* Subsection (1) does not apply to the operation of an unmanned aerial vehicle system conducted by a unit or agency of the United States government or of a state, tribal, or local government, including any individual conducting an operation pursuant to a contract or other agreement entered into with the unit or agency, for the purpose of protecting the public safety and welfare, including firefighting, law enforcement, or emergency response.

(b) Subsection (2) does not limit other remedies available for damages to any person or property or the recovery of wildfire suppression costs caused by a person who violates subsection (1).

~~(4) As used in this section, the following definitions apply:~~

~~(a) "Unmanned aerial vehicle" means an aircraft that is:~~

~~(i) capable of sustaining flight; and~~

~~(ii) operated with no possible direct human intervention from on or within the aircraft.~~

~~(b) "Unmanned aerial vehicle system" means the entire system used to operate an unmanned aerial vehicle, including:~~

~~(i) the unmanned aerial vehicle;~~

~~(ii) communications equipment;~~

~~(iii) navigation equipment;~~

~~(iv) controllers;~~

~~(v) support equipment; and~~

~~(vi) autopilot functionality.~~

~~(c) "Wildfire" means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels.~~

~~(d) "Wildfire suppression" means an effort to contain, extinguish, or suppress a wildfire.~~"

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

Approved May 19, 2023

CHAPTER NO. 663

[SB 221]

AN ACT REVISING LICENSE PLATE LAWS; ALLOWING A PERSON SERVING OR RETIRED FROM SERVING ABOARD THE USS MONTANA TO RECEIVE USS MONTANA LICENSE PLATES; REQUIRING VEHICLES WITH USS MONTANA LICENSE PLATES DRIVEN IN THE USS MONTANA'S HOME PORT STATE TO FOLLOW THAT STATE'S LAWS REGARDING SAFETY INSPECTIONS AND EMISSIONS TESTING; AND AMENDING SECTIONS 61-3-302, 61-3-303, AND 61-3-479, MCA.

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

Section 1. Out-of-state USS Montana vehicles -- compliance with local state safety and emissions laws. A vehicle displaying USS Montana specialty license plates and located for more than 1 month in the state that contains the home port of the USS Montana is subject to that state's laws regarding safety inspections and emissions testing.

Section 2. Section 61-3-302, MCA, is amended to read:

"**61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden -- vehicles exempt from registration -- exceptions.** (1) (a) A resident of the state of Montana who owns a motor vehicle, trailer, semitrailer, or pole trailer may not operate the motor vehicle, trailer, semitrailer, or pole trailer with license plates issued by any other state than Montana.

(b) *(i)* A person who has resided in Montana for more than 60 consecutive days is considered to be a resident for the purpose of vehicle titling and registration laws, and a motor vehicle, trailer, semitrailer, or pole trailer owned by the person must be titled and registered under the laws of Montana prior to operation in this state after the 60-day period.

(ii) A person serving or retired from serving aboard the USS Montana is considered, at the election of the person, a resident for the purpose of motor vehicle titling and registration laws and may apply for a USS Montana specialty license plate pursuant to 61-3-479(1)(a)(ii). Residency is not conferred for any other purpose.

(2) A motor vehicle, trailer, semitrailer, or pole trailer driven or moved upon a highway in this state and owned by a nonresident of this state is exempt from registration under this chapter if:

(a) the vehicle is properly registered in and displays valid license plates of the jurisdiction in which the nonresident owner resides; and

(b) (i) the vehicle is not used for the transportation of persons or property for hire, compensation, or profit;

(ii) the nonresident owner is not employed or engaged in a commercial or business enterprise in this state; or

(iii) the vehicle is used for the exclusive purpose of filming motion pictures or television commercials and does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

(3) A motor vehicle, trailer, semitrailer, or pole trailer that is owned by a manufacturer, a dealer, a wholesaler, or an auto auction and that is held for sale is exempt from registration under this part even though the motor vehicle, trailer, semitrailer, or pole trailer is incidentally moved on the highway and

is used for purposes of testing or demonstration or is used by a manufacturer solely for testing.

(4) A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven to an auto wrecking graveyard for disposal is exempt from the provisions of this chapter."

Section 3. Section 61-3-303, MCA, is amended to read:

"**61-3-303. Original registration -- process -- fees.** (1) Except as provided in 61-3-324, a Montana resident who is an owner of a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the county where the registering owner is domiciled. A nonresident who has an interest in real property in Montana may register in the county where the real property is located a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state. *A person serving or retired from serving aboard the USS Montana may register by mail in Lewis and Clark County using forms prescribed by the department.*

(2) A Montana resident who is an owner of a motor vehicle, trailer, semitrailer, or pole trailer with co-owners, one or more of whom are not Montana residents, may register the vehicle regardless of the fact that one or more of the co-owners would otherwise not qualify to register the vehicle under subsection (1) if the registering Montana resident is:

(a) an individual human being; and

(b) the principal operator of, and in whom is vested the right of possession and control of, the vehicle.

(3) Except as provided in subsection (4), the county treasurer or an authorized agent shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, an owner delivers an application for a certificate of title to the department, an authorized agent, or a county treasurer; or

(b) the county treasurer or an authorized agent confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(4) (a) A county treasurer or an authorized agent may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer or the authorized agent examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer or an authorized agent may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer or an authorized agent shall collect fees pursuant to 61-3-203 and 61-3-220(4) and issue a 90-day temporary registration permit pursuant to 61-3-224 for a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner shall request the 90-day temporary registration permit from the authorized agent or county treasurer that originally issued the temporary registration permit.

(c) A person serving or retired from serving aboard the USS Montana shall include in an application for a certificate of title, in a manner prescribed by the

department, proof that the person has current orders to serve or has previously served aboard the USS Montana.

(5) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer or an authorized agent shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (6); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(6) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer or an authorized agent:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(7) The county treasurer or an authorized agent may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (6).

(8) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(9) Revenue that accrues from the voluntary donation provided in subsection (6)(b) must be forwarded by the respective county treasurer or an authorized agent to the department for deposit in the state special revenue fund to the credit of an account established by the department of labor and industry to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(10) (a) Except as provided in subsection (10)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. When registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred or unless it was registered under 61-3-701.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register

the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(11) Revenue that accrues from the voluntary donation provided in subsection (6)(c) must be forwarded by the respective county treasurer or an authorized agent to the department for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

(12) The department, an authorized agent of the department, or a county treasurer shall use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify that the vehicle owner has complied with the requirements of 61-6-301."

Section 4. Section 61-3-479, MCA, is amended to read:

"**61-3-479. Issuance of generic specialty license plates -- qualifications.** (1) (a) Except as provided in subsection (1)(b), the department shall issue*:*

(i) a set of generic specialty license plates to a person who applies for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480~~.~~*; or*

(ii) a set of USS Montana specialty license plates to a person serving or retired from serving aboard the USS Montana who applies and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480.

(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the state and required under 15-1-504 as of the initial distribution date for the sale of the sponsor's plates, the department shall require the sponsor to collect the initial donation fee from, and issue a special certificate of registration to, a person who is eligible to receive the sponsor's generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.

(2) A set of generic specialty license plates may be issued for any motor vehicle except a motorcycle or a quadricycle.

(3) (a) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, a person who receives generic specialty license plates is subject to the same rules and laws as those that govern standard license plates.

(b) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, the department is subject to the same rules and laws that govern the issuance of standard license plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to any maximum issuance or use limitation that may be imposed on standard license plates.

(4) A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in 61-3-332(9)."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions of Title 61, chapter 3, part 3, apply to [section 1].

Approved May 19, 2023

CHAPTER NO. 664

[SB 229]

AN ACT REQUIRING THE ATTORNEY GENERAL TO REIMBURSE COUNTIES FOR ACTUAL WITNESS COSTS IN CERTAIN CRIMINAL PROCEEDINGS; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 26-2-506, 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 county except as provided in subsection (2)(c).

(c) The attorney general ~~may~~ *shall* reimburse a county for fees and compensation of ~~a~~ *an expert* witness up to the amount appropriated for *expert* witness expenses*, except for cases in which the death penalty is being sought by the prosecution*. ~~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.~~ *The attorney general shall adopt rules to provide for reimbursement procedures, including setting priorities for expenses and balancing between the needs of rural and urban counties.*

(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. Appropriation. (1) There is appropriated $150,000 from the general fund to the department of justice for each year of the biennium beginning July 1, 2023, which may be used only for the purposes of reimbursing counties for fees and compensation of expert witnesses as provided in 26-2-506(2)(c), except for cases in which a defendant may be sentenced to death.

(2) For cases in which the death penalty is being sought by the prosecution, county reimbursement for fees and compensation of expert witnesses may be paid through a supplemental appropriation as authorized by the legislature.

(3) The legislature intends that the appropriation in this section be considered part of the ongoing base for the next legislative session.

Section 3. Effective date. [This act] is effective July 1, 2023.

Approved May 19, 2023

CHAPTER NO. 665

[SB 247]

AN ACT REVISING COVENANT LAWS; PROVIDING THAT THE 8-YEAR STATUTE OF LIMITATIONS FOR OBLIGATIONS ON A CONTRACT APPLIES TO COVENANTS; LIMITING WHO MAY INITIATE LEGAL

ACTION TO ENFORCE CERTAIN COVENANTS; PROVIDING WHEN A PARCEL OWNER CAN ASSERT A DEFENSE THAT A COVENANT HAS BEEN ABANDONED; LIMITING WHEN COVENANTS MAY BE ENFORCED IF A GOVERNING BODY HAS NOT MET FOR A PERIOD OF TIME; AMENDING SECTION 27- 2-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Covenant enforcement and abandonment. (1) An association or any party to an interest in land subject to a covenant, condition, or restriction may initiate a legal action to enforce covenants, conditions, or restrictions.

(2) A parcel owner may assert a defense that a covenant, condition, or restriction has been abandoned for purposes of enforcement by offering evidence that no enforcement action has been undertaken for the prescribed period in 27-2-202. Once a covenant, condition, or restriction is abandoned by a court order or agreed to have been abandoned by the approval of the appropriate association, by recording a notice of abandonment or amendment in the office of the county clerk and recorder of the county where the development is situated, all persons are precluded from undertaking a different interpretation or enforcement action of the abandoned covenant, condition, or restriction against a similarly situated parcel owner in the same development.

(3) (a) Except as provided in subsection (3)(b), an association that has not met for a period of 15 years is prohibited from taking an enforcement action against a parcel owner whose use of the parcel is substantially similar to the nature and scope of the use of other parcels in the development.

(b) Covenants, conditions, and restrictions are still valid and enforceable under this subsection (3) if they are otherwise necessary:

(i) to comply with applicable federal, state, and local laws, ordinances, and regulations;

(ii) for an easement or right-of-way;

(iii) for the maintenance of infrastructure or improvements in the development;

(iv) to comply with a court order or the approval provided by a government on the establishment of the covenants, conditions, and restrictions;

(v) for the installation, maintenance, or removal of utilities; or

(vi) to abate a nuisance.

Section 2. Section 27-2-202, MCA, is amended to read:

"**27-2-202. Actions based on contract or other obligation.** (1) The period prescribed for the commencement of an action ~~upon~~ *on* any contract, *covenant,* obligation, or liability founded ~~upon~~ *on* an instrument in writing is within 8 years.

(2) The period prescribed for the commencement of an action ~~upon~~ *on* a contract, account, or promise not founded on an instrument in writing is within 5 years.

(3) The period prescribed for the commencement of an action ~~upon~~ *on* an obligation or liability, other than a contract, account, or promise, not founded ~~upon~~ *on* an instrument in writing is within 3 years."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [section 1].

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

CHAPTER NO. 666

[SB 265]

AN ACT REVISING LAWS RELATED TO HUMAN TRAFFICKING; INCREASING FINES AND MAKING FINES MANDATORY; AMENDING SECTIONS 45-5-702, 45-5-703, 45-5-704, AND 45-5-705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 45-5-702, MCA, is amended to read:

"**45-5-702. Trafficking of persons.** (1) A person commits the offense of trafficking of persons if the person purposely or knowingly:

(a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or

(b) benefits, financially or by receiving anything of value, from facilitating any conduct described in subsection (1)(a) or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), a person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 15 years, fined ~~an amount not to exceed $50,000~~ *in the amount of $400,000*, or both.

(b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 50 years, fined ~~an amount not to exceed~~ *in the amount of*~~$100,000~~ *$400,000*, or both, if the victim was a child.

(c) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 25 years, fined ~~an amount not to exceed $75,000~~ *in the amount of $400,000*, or both, if the violation involves aggravated kidnapping, aggravated sexual intercourse without consent, or deliberate homicide."

Section 2. Section 45-5-703, MCA, is amended to read:

"**45-5-703. Involuntary servitude.** (1) A person commits the offense of involuntary servitude if the person purposely or knowingly uses coercion to compel another person to provide labor or services, unless the conduct is otherwise permissible under federal or state law.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of involuntary servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined ~~an amount not to exceed $50,000~~ *in the amount of $400,000*, or both.

(b) A person convicted of the offense of involuntary servitude shall be imprisoned in the state prison for a term of not more than 50 years and may be fined ~~not more than $100,000~~ *in the amount of $400,000* if:

(i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide; or

(ii) the victim was a child."

Section 3. Section 45-5-704, MCA, is amended to read:

"**45-5-704. Sexual servitude.** (1) A person commits the offense of sexual servitude if the person purposely or knowingly:

(a) uses fraud, coercion, or deception to compel an adult to engage in commercial sexual activity; or

(b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.

(2) It is not a defense in a prosecution under subsection (1)(b) that the child consented to engage in commercial sexual activity or that the defendant believed the child was an adult.

(3) (a) A person convicted of the offense of sexual servitude under subsection (1)(a) shall be imprisoned in the state prison for a term of not more than 15 years, fined ~~an amount not to exceed $50,000~~ *in the amount of $400,000*, or both.

(b) A person convicted of the offense of sexual servitude under subsection (1)(b) shall be imprisoned in the state prison for a term of not more than 25 years and fined ~~an amount not to exceed $75,000~~ *in the amount of $400,000*."

Section 4. Section 45-5-705, MCA, is amended to read:

"**45-5-705. Patronizing victim of sexual servitude.** (1) A person commits the offense of patronizing a victim of sexual servitude if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity:

(a) that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of sexual servitude; or

(b) with a child.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of patronizing a victim of sexual servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined ~~an amount not to exceed $50,000~~ *in the amount of $400,000*, or both.

(b) If the individual patronized was a child, a person convicted of the offense of patronizing a victim of sexual servitude, whether or not the person believed the child was an adult, shall be imprisoned in the state prison for a term of not more than 25 years and fined ~~an amount not to exceed $75,000~~ *in the amount of $400,000*."

Section 5. Coordination instruction.. If both House Bill No. 112 and [this act] are passed and approved and if both contain a section that amends 45-5-702, then the sections amending 45-5-702 are void and 45-5-702 must be amended as follows:

"**45-5-702. ~~Trafficking of persons~~ *Sex trafficking*.** (1) A person commits the offense of *sex* trafficking ~~of persons~~ if the person purposely or knowingly:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or prostitution business;

(b) procures an individual for a house of prostitution or prostitution business or procures a place in a house of prostitution or prostitution business for an individual;

(c) encourages, induces, or otherwise purposely causes another person to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases other otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means;

~~(a)~~*(h)* recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that

the person will be subjected to ~~involuntary servitude or sexual servitude~~ *prostitution;* or

~~(b)~~*(i)* benefits, financially or by receiving anything of value, from facilitating any conduct described in ~~subsection~~ *subsections* (1)(a) *through (1)(h)* ~~or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude~~.

(2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ *A* person convicted of the offense of *sex* trafficking ~~of persons~~ shall be imprisoned in the state prison for a term of ~~not more than 15 years~~ *not less than 2 years or more than 20 years*, fined ~~an amount not to exceed $50,000~~ *in the amount of $400,000*, or both.

~~(b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 50 years, fined an amount not to exceed $100,000, or both, if the victim was a child.~~

~~(c) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 25 years, fined an amount not to exceed $75,000, or both, if the violation involves aggravated kidnapping, aggravated sexual intercourse without consent, or deliberate homicide.~~"

Section 6. Coordination instruction. If both House Bill No. 112 and [this act] are passed and approved and both contain a section that amends 45-5-702(2)(b), then [section 19 of House Bill No. 112] is void must be replaced with the following:

"NEW SECTION. **Section 19. Child sex trafficking.** (1) A person commits the offense of child sex trafficking by purposely or knowingly:

(a) committing the offense of sex trafficking with a child; or

(b) recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, enticing, or using a child for the purposes of commercial sexual activity.

(2) (a) A person convicted of the offense of child sex trafficking shall be imprisoned in the state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(a) except as provided in 46-18-222(1) through (4). During the first 25 years of imprisonment, the offender is not eligible for parole. The exceptions provided in 46-18-222(5) and (6) do not apply.

(b) In addition to the sentence of imprisonment imposed under subsection (2)(a), the offender:

(i) must be fined in the amount of $400,000; and

(ii) if released after the mandatory minimum period of imprisonment, 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.

(3) It is not a defense in a prosecution under this section:

(a) that a child consented to engage in commercial sexual activity; or

(b) that the defendant believed the child was an adult. Absolute liability, as provided in 45-2-104, is imposed."

Section 7. Coordination instruction.. If both House Bill No. 112 and [this act] are passed and approved and both contain a section that amends 45-5-703, then then sections amending 45-5-703 are void and 45-5-703 must be amended as follows:

"45-5-703. ~~Involuntary servitude~~ *Labor trafficking.* (1) A person commits the offense of ~~involuntary servitude~~ *labor trafficking* if the person purposely or knowingly uses coercion to compel another person to provide labor or services, unless the conduct is otherwise permissible under federal or state law.

(2) (a) Except as provided in subsection ~~(2)(b)~~ *(3)*, a person convicted of the offense of ~~involuntary servitude~~ *labor trafficking* shall be imprisoned in the state prison for a term of not more than 15 years, fined *in the amount of $400,000*, or both.

~~(b) A person convicted of the offense of involuntary servitude shall be imprisoned in the state prison for a term of not more than 50 years and may be fined not more than $100,000 if:~~

~~(i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide; or~~

~~(ii) the victim was a child.~~

(3) If the victim is less than 18 years of age, the offender shall be imprisoned in the state prison for a term of not less than 4 years or more than 50 years, fined in the amount of $400,000, or both."

Section 8. Coordination instruction. If both House Bill No. 112 and [this act] are passed and approved and both contain a section that amends 45-5-705, then the sections that amend 45-5-705 are void and 45-5-705 must be amended as follows:

"45-5-705. ***Patronizing victim of*** **~~sexual servitude~~** ***sex trafficking.*** (1) A person commits the offense of patronizing a victim of ~~sexual servitude~~ *sex trafficking* if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity~~:~~

~~(a)~~ that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of ~~sexual servitude~~ *sex trafficking*~~; or~~

~~(b) with a child~~.

(2) ~~(a)~~ Except as provided in subsection ~~(2)(b)~~ *(3)*, a person convicted of the offense of patronizing a victim of ~~sexual servitude~~ *sex trafficking* shall*:*

(a) for the first offense, be imprisoned in the state prison for a term of not more than 15 years, fined ~~an amount not to exceed $50,000~~ *in the amount of $400,000*, or both~~.~~*; or*

(b) for a second or subsequent offense, be imprisoned in the state prison for a term of not less than 2 years or more than 15 years, fined in the amount of $400,000, or both.

(3) (a) If the individual patronized was a child *and the patron was 18 years of age or older*, a person convicted of the offense of patronizing a victim of ~~sexual servitude~~ *sex trafficking*, whether or not the person believed the child was an adult~~, shall~~*:*

(i) shall be imprisoned in the state prison for a term of ~~not more than 25~~ *100* years. ~~and fined an amount not to exceed $75,000~~ *The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment the offender is not eligible for parole.*

(ii) shall be fined in the amount of $400,000; and

(iii) must 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.

(4) It is not a defense in a prosecution under this section:

(a) that a child consented to engage in commercial sexual activity; or

(b) that the defendant believed that the child was an adult. Absolute liability, as provided in 45-2-104, is imposed."

Section 9. Coordination instruction. If both House Bill No. 112 and [this act] are passed and approved, if House Bill No. 112 contains a section amending 45-5-706, and if [this act] contains a section amending 45-5-702(2)(c) then the section in House Bill No. 112 amending 45-5-706 is void and 45-5-706 must be amended as follows:

"45-5-706. ~~Aggravating circumstance~~ *Aggravated sex trafficking.* (1) *A person commits the offense of aggravated sex trafficking if, during the commission of the offense of sex trafficking, the person purposely or knowingly:*

(a) uses fraud, coercion, or deception to control an adult to engage in prostitution; or

(b) ~~An aggravating circumstance during the commission of an offense under 45-5-702, 45-5-703, 45-5-704, or 45-5-705 occurs when the defendant recruited, enticed, or obtained~~ *recruits, entices, or obtains* the victim of the offense from a shelter that serves runaway youth, foster children, homeless persons, ~~or persons subjected to~~ human trafficking *victims, or victims of* domestic violence, or sexual ~~assault~~ *violence*.

(2) ~~If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under 45-5-702, 45-5-703, 45-5-704, or 45-5-705, the defendant may be imprisoned for up to 5 years in addition to the period of imprisonment prescribed for the offense. An additional sentence prescribed by this section must run consecutively to the sentence provided for the underlying offense~~ *A person convicted of the offense of aggravated sex trafficking shall be imprisoned in the state prison for a term of not less than 5 years or more than 40 years, fined in the amount of $400,000, or both. The exceptions provided in 46-18-222(5) and (6) do not apply*."

Section 10. Effective date. [This act] is effective on passage and approval.

Approved May 19, 2023

CHAPTER NO. 667

[SB 278]

AN ACT PROVIDING FOR LEGISLATIVE INTERVENTION IN A DECLARATORY JUDGMENT ACTION; PROVIDING THE RIGHT TO INTERVENE TO LEGISLATIVE OFFICERS; PROVIDING THE RIGHT TO INTERVENE TO A PRIMARY SPONSOR WHO VOTED FOR PASSAGE AND APPROVAL OF THE LEGISLATION AT ISSUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Findings of purpose -- legislator intervention in legal challenges authorized. (1) The legislature finds that:

(a) proper interpretation and administration of the constitution and legislative enactments and referendums of the state are matters of great public interest and significant importance;

(b) an individual legislator in the legislator's capacity as the primary sponsor of legislation at issue who voted for passage and approval of the legislation has a plain, direct, and adequate interest in maintaining the effectiveness of the legislator's vote and has a personal stake in ensuring proper interpretation and administration of the constitution and legislative enactments and referendums that is distinguishable from that of the public generally; and

(c) the officers of the legislature have a plain, direct, and adequate interest in ensuring proper interpretation and administration of legislative enactments.

(2) The officers of the legislature and a legislator in the legislator's capacity as the primary sponsor of legislation at issue who voted for passage and approval of the legislation may intervene as of right, individually or jointly, in declaratory judgment actions involving alleged constitutional or statutory violations of state law.

(3) Nothing in this section supersedes the authority of the attorney general to represent the state of Montana.

(4) The participation of an officer of the legislature in any action, state or federal, as a party or otherwise, does not constitute a waiver of legislative immunity or legislative privilege of any individual legislator, officer of the legislature, or legislative staff.

(5) Subject to available appropriation authority, an officer of the legislature may use funding that is approved by the legislative council or funding that is under the direction and control of the officer of the legislature to pay attorney fees and costs associated with intervention under subsection (2). A sponsor is responsible for paying attorney fees and costs associated with intervention under subsection (2) unless funding is approved by the legislative council.

(6) For the purposes of this section, "officer of the legislature" means the speaker of the house and the president of the senate.

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

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

Section 4. Applicability. [This act] applies to proceedings initiated after [the effective date of this act].

Approved May 19, 2023

CHAPTER NO. 668

[SB 280]

AN ACT REVISING BIRD DOG TRAINING LAWS; REQUIRING A LICENSE TO USE WILD GAME BIRDS; REVISING RULEMAKING AUTHORITY; AMENDING SECTIONS 87-3-602 AND 87-3-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-3-602, MCA, is amended to read:

"**87-3-602. Training bird hunting dogs -- *Class D-5 license.*** (1) *(a)* Training of bird hunting dogs *using game birds not raised in captivity* is allowed *with the purchase of a Class D-5 license and pursuant to the requirements of this part.*

(b) A Class D-5 license is required for training bird dogs using game birds not raised in captivity. A person who is at least 18 years of age or older or who will turn 18 years of age during the season for which the license is issued may purchase a license for a fee of $5 for residents and $10 for nonresidents. The department may issue a free resident or nonresident Class D-5 license to a youth who is 12 to 18 years of age.

(2) ~~A~~ *A Class D-5 license is not required for a* person training bird hunting dogs with a method that kills game birds *raised in captivity. A person* shall tag or mark the *captive* game bird prior to release. ~~Game~~ *Captive 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 2. Section 87-3-604, MCA, is amended to read:

"**87-3-604. Rulemaking authority.** The ~~department~~ *commission* ~~may~~ *shall* adopt rules to implement the provisions of this part*, including limiting the number of Class D-5 licenses*."

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

Approved May 19, 2023

CHAPTER NO. 669

[SB 294]

AN ACT ESTABLISHING THE MONTANA END OF WATCH TRUST AND PROVIDING RELATED SUPPORTS; CREATING A STATE SPECIAL REVENUE ACCOUNT; CREATING AN OVERSIGHT BOARD THAT IS ATTACHED TO THE DEPARTMENT OF JUSTICE FOR ADMINISTRATIVE PURPOSES; PROVIDING FOR LOCAL GOVERNMENT AND STATE GOVERNMENT PAYMENTS FOR HEALTH INSURANCE BENEFITS WHEN AN OFFICER IS CATASTROPHICALLY INJURED OR DIES; PROVIDING THAT A BENEFIT RECEIVED FROM THE TRUST IS NOT TAXABLE INCOME; PROVIDING FOR RETROACTIVE PAYMENTS FROM THE TRUST; PROVIDING DEFINITIONS; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 2-18-704, 15-30-2110, 15-30-2120, AND 25-13-608, MCA; PROVIDING A FUND TRANSFER; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, Montana law enforcement officers are charged with the enforcement of the laws of the State of Montana as determined by the Montana State Legislature; and

WHEREAS, law enforcement officers put their lives on the line each day to protect the people of Montana; and

WHEREAS, line of duty deaths and catastrophic injuries often leave behind dependent family members who are struggling to cope mentally, emotionally, and financially with the trauma of a line of duty death or to provide care to a catastrophically injured spouse; and

WHEREAS, the State of Montana does not currently provide a line of duty death or catastrophic injury benefit to officers or their families when one of these tragedies occurs.

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

Section 1. Definitions. For the purposes of [sections 1 through 6], the following definitions apply:

(1) "Board" means the Montana end of watch trust board established in [section 5].

(2) "Catastrophic injury" means an injury directly related to an individual's required employment duties with direct or proximate consequences that renders the individual in need of 24-hour care, permanently incapacitates the individual, and permanently prevents the individual from performing any gainful work.

(3) "Department" means the department of justice.

(4) "Immediate family" means a law enforcement officer's spouse and dependent children under age 18, including children to whom the law enforcement officer is a legal guardian.

(5) "In the line of duty" means an action taken by a law enforcement officer or an activity in which a law enforcement officer participated:

(a) as required or authorized by law, rule, regulation, condition of employment, or professional ethics; and

(b) for which compensation is provided by the officer's employer or would have been provided by the officer's employer if the officer had been on duty at the time the action in question was taken.

(6) "Law enforcement officer" means:

(a) a police officer, deputy sheriff, undersheriff, highway patrol officer, investigator appointed by the department of justice, fish and game warden, park ranger, or other public safety officer certified by the public safety officer standards and training council; or

(b) a sheriff.

Section 2. Montana end of watch trust. (1) There is a Montana end of watch trust within the permanent fund type for the purpose of supporting eligible law enforcement officers and their surviving immediate family in the event of an officer's death or catastrophic injury in the line of duty.

(2) The department may accept contributions and gifts for the trust in money or other forms. When accepted, the contributions and gifts must be deposited in the trust.

(3) The legislature may transfer money to the trust.

(4) The state treasurer shall each month transfer from the trust to the account established in [section 3] the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in [section 3] must be retained in the trust account. Any unexpended interest that transfers back into the trust can be appropriated if monthly obligations exceed the current available interest in the account. If this portion of the trust is appropriated in any fiscal year, the state treasurer shall transfer that same amount from the general fund to the trust in the following fiscal year.

(5) The board of investments shall invest money deposited in the fund established under this section as provided by law.

Section 3. Montana end of watch account -- payment and cessation of payment. (1) There is a Montana end of watch state special revenue account within the state special revenue fund established in 17-2-102 administered by the department of justice. Pursuant to [section 2], all interest and earnings from the trust fund established in [section 2] must be deposited into this fund.

(2) The department of justice shall disburse payments to a qualifying law enforcement officer or the law enforcement officer's immediate family as provided in this section.

(3) (a) Payments for a catastrophic injury in the line of duty must be made to a catastrophically injured law enforcement officer on a monthly basis for 60 months from the date of the injury.

(b) In the event the catastrophically injured law enforcement officer dies prior to receiving all 60 monthly payments, the department shall pay on a monthly basis the remainder of the 60 monthly payments to the law enforcement officer's immediate family as follows:

(i) to the law enforcement officer's surviving spouse until the surviving spouse remarries or dies; or

(ii) if there is no surviving spouse or if the surviving spouse remarries or dies prior to the disbursement of all 60 monthly payments, then the remainder

of the 60 monthly payments must be made to the law enforcement officer's surviving dependent children under 18 years of age, in equal shares, and subject to the Uniform Transfers to Minors Act provided for in Title 72, chapter 26.

(c) In the event there is no surviving spouse that has not remarried or surviving dependent children under 18 years of age, the payments must cease.

(4) (a) Payments for a law enforcement officer killed in the line of duty must be made to the law enforcement officer's surviving immediate family on a monthly basis for 60 months from the date of the law enforcement officer's death. The department shall make the payments as follows:

(i) to the law enforcement officer's surviving spouse until the surviving spouse remarries or dies;

(ii) if there is no surviving spouse or if the surviving spouse remarries or dies prior to disbursement of all 60 monthly payments, then the remainder of the 60 monthly payments must be made to the law enforcement officer's surviving dependent children under 18 years of age, in equal shares, and subject to the Uniform Transfers to Minors Act provided for in Title, 72, chapter 26.

(b) In the event there is no surviving spouse that has not remarried or surviving dependent children under 18 years of age, the payments must cease.

(5) (a) For the first 12 months following the date of the catastrophic event or death, the monthly payment due to a qualifying law enforcement officer or the law enforcement officer's immediate family under this section is $7,000 a month.

(b) For months 13 through 60 following the date of the catastrophic event or death, the monthly payment due to a qualifying law enforcement officer or the law enforcement officer's immediate family under this section is:

(i) $7,000, subject to an annual increase according to the consumer price index or 3%, whichever is less;

(ii) minus the sum of:

(A) one-half of the workers' compensation monthly benefit based on the employment of the qualifying law enforcement officer paid to the law enforcement officer or the law enforcement officer's immediate family; and

(B) one-half of the state retirement monthly benefit paid based on the employment of the qualifying law enforcement officer to the law enforcement officer or the law enforcement officer's immediate family.

(6) The money in the account is subject to legislative appropriation.

(7) All payments under this section are exempt from execution without limit as provided in 25-13-608.

Section 4. Certification of continued eligibility -- notification of change in marital status -- notification of date of birth. (1) Each year on the anniversary of the first payment made under [section 3(3)], the catastrophically injured law enforcement officer, surviving spouse, other immediate family member, or agent of the catastrophically injured law enforcement officer, surviving spouse, or other immediate family member, shall attest to the board on a form provided by the department that the law enforcement officer is still eligible under the definition of catastrophic injury in [section 1]. If the law enforcement officer is no longer eligible under the definition of catastrophic injury in [section 1] or if the annual attestation is not submitted within 120 days after the anniversary date of the first payment under [section 3(3)], the payment must cease.

(2) If payments are being made to a surviving spouse and the surviving spouse's marital status changes, the surviving spouse shall notify the board of the change in marital status within 120 days. On receipt of notification, the payment must be dispersed as directed in [sections 3(3)and 3(4)].

(3) On a form provided by the department and within 180 days of receipt of the first payment, the catastrophically injured law enforcement officer, surviving spouse, other immediate family member, or agent of the catastrophically injured law enforcement officer, surviving spouse, or other immediate family member, shall provide the board with the identity and dates of birth of all dependent children of the law enforcement officer who were under 18 years of age at the time of the law enforcement officer's catastrophic injury or date of death.

Section 5. Montana end of watch trust board. (1) There is a volunteer board to oversee the administration of the Montana end of watch trust provided for in [section 2]. The board is attached to the department of justice for administrative purposes only, as provided in 2-15-121.

(2) The board consists of five members appointed by the attorney general, including:

(a) a representative of the Montana sheriffs and peace officers association;

(b) a representative of the Montana police protective association;

(c) a representative of the association of Montana troopers;

(d) a representative of the Montana association of chiefs of police; and

(e) a representative from the department of justice.

(3) The board shall:

(a) meet at least once each fiscal year;

(b) act as an advocate for officers catastrophically injured in the line of duty and the surviving immediate family members of officers who died in the line of duty; and

(c) settle disputes and concerns regarding trust benefits.

(4) The representatives in subsection (2) must be sworn actors of a participating agency.

Section 6. End of watch health insurance support. (1) (a) Local governments that employ a law enforcement officer as defined in [section 1] and provide health insurance benefits to an officer, an officer's spouse, or an officer's dependents shall:

(i) enroll the officer and the officer's spouse and dependents in COBRA continuation coverage if the officer is catastrophically injured, as that term is defined in [section 1]; and

(ii) enroll the officer's spouse and dependents in COBRA coverage if the officer dies in the line of duty as that term is defined in [section 1].

(b) Continuation coverage under this section must provide for the same level of continuation coverage benefits as is available to other members of the group. Premiums charged to an officer, spouse, or dependent under this section must be the same as premiums charged to other similarly situated members of the group.

(c) Dependent special enrollment must be allowed under the terms of the insurance contract or plan.

(d) The provisions of this section are applicable to an officer, spouse, or dependent who is already insured under a COBRA continuation provision.

(2) The law enforcement officer's employing agency shall pay the premium for 4 months after the catastrophic injury or death in the line of duty, after which the officer, spouse, or dependent shall pay the premium.

(3) The benefit plans may discontinue or not renew the coverage of an officer, spouse, or dependent only if:

(a) the officer, spouse, or dependent has failed to pay premiums or contributions for which the individual is responsible;

(b) the officer, spouse, or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(c) the state employee group benefit plans cease to offer coverage in accordance with applicable state law.

Section 7. Section 2-18-704, MCA, is amended to read:

"**2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for:

(a) treatment of inborn errors of metabolism, as provided for in 33-22-131;

(b) therapies for Down syndrome, as provided in 33-22-139;

(c) treatment for children with hearing loss as provided in 33-22-128(1) and (2);

(d) the care and treatment of mental illness in accordance with the provisions of Title 33, chapter 22, part 7; and

(e) telehealth services, as provided for in 33-22-138.

(8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted

under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the advisory committee on immunization practices of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (8).

(d) For purposes of this subsection (8):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (8)(b) and delivered by a physician or a health care professional supervised by a physician.

(9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must continue to provide coverage for any dependent, as defined in the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in the insurance contract or plan, may be required to be paid by the insured and not by the employer.

(10) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(b) Coverage must include a $250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(c) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

(e) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(f) This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease,

or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.

(13) (a) ~~The~~ *Except as provided in subsection (16), the* state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as is available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(b) The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:

(i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the Montana university system group benefits plans or if the plans have not received timely premium payments;

(ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(iii) the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law.

(14) The state employee group benefit plans and the Montana university system group benefits plans must comply with the provisions of 33-22-153.

(15) An insurance contract or plan issued under this part and a group benefits plan issued by the Montana university system must provide mental health coverage that meets the provisions of Title 33, chapter 22, part 7.

(16) The employing state agency of a law enforcement officer as defined in [section 1] who is covered under the state employee group benefit plan shall:

(a) if the officer is catastrophically injured in the line of duty as defined in [section 1], enroll the officer and the officer's covered spouse or dependent children in COBRA continuation coverage when that officer is terminated from employment as a result of the catastrophic injury. The officer and the officer's spouse or dependent children may opt out of COBRA continuation coverage within 60 days of enrollment.

(b) enroll the officer's covered spouse or dependent children in COBRA continuation coverage if the officer dies in the line of duty as defined in [section 1]. The officer's spouse or dependent children may opt out of COBRA coverage within 60 days of the date of enrollment.

(c) pay the COBRA premium for 4 months of COBRA continuation coverage for the officer and the officer's covered spouse or dependent children enrolled in COBRA continuation coverage pursuant to subsections (16)(a) or (16)(b), after which time the officer and the officer's spouse or dependent children shall pay the COBRA premium. (See compiler's comments for contingent termination of certain text.)"

Section 8. Section 15-30-2110, MCA, is amended to read:

"**15-30-2110. (Temporary) Adjusted gross income.** (1) Subject to subsection (15), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability as determined under subsection (16);

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (17), the first $4,070 of all pension and annuity income received as defined in 15-30-2101;

(ii) subject to subsection (17), for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $33,910 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension

or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $33,910 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care savings account inherited by an immediate family member as provided in 15-61-202(6);

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions or earnings withdrawn from an account established under the Montana family education savings program, Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified 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*; and*

(u) payments from the Montana end of watch trust as provided in [section 2].

(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 may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not to exceed $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118.

(13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (13)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (13)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(14) A taxpayer may exclude the amount of loan repayment assistance received during the tax year pursuant to Title 20, chapter 4, part 5, not to exceed $5,000, from the taxpayer's adjusted gross income.

(15) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

(16) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the following order as applicable:

(a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax year;

(b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year but did not result in a reduction in state income tax liability in that prior tax year; and

(c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year and that reduced the taxpayer's state income tax liability in that prior tax year.

(17) By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for the following tax year, rounded to the nearest $10. The resulting amounts are effective for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Repealed effective January 1, 2024--secs. 65, 70(1), Ch. 503, L. 2021; 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)(t) terminates June 30, 2027--sec. 10, Ch. 374, L. 2017; subsection (2)(s) terminates December 31, 2029--sec. 20, Ch. 480, L. 2021.)"

Section 9. Section 15-30-2120, MCA, is amended to read:

"**15-30-2120. (Effective January 1, 2024) Adjustments to federal taxable income to determine Montana taxable income.** (1) The items in subsection (2) are added to and the items in subsection (3) are subtracted from federal taxable income to determine Montana taxable income.

(2) The following are added to federal taxable income:

(a) to the extent that it is not exempt from taxation by Montana under federal law, interest from obligations of a territory or another state or any political subdivision of a territory or another state and exempt-interest dividends attributable to that interest except to the extent already included in federal taxable income;

(b) 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;

(c) depreciation or amortization taken on a title plant as defined in 33-25-105;

(d) 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;

(e) an item of income, deduction, or expense to the extent that it was used to calculate federal taxable income if the item was also used to calculate a credit against a Montana income tax liability;

(f) a deduction for an income distribution from an estate or trust to a beneficiary that was included in the federal taxable income of an estate or trust in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661;

(g) a withdrawal from a medical care savings account provided for in Title 15, chapter 61, used for a purpose other than an eligible medical expense or long-term care of the employee or account holder or a dependent of the employee or account holder;

(h) a withdrawal from a first-time home buyer savings account provided for in Title 15, chapter 63, used for a purpose other than for eligible costs for the purchase of a single-family residence;

(i) for a taxpayer that deducts the qualified business income deduction pursuant to section 199A of the Internal Revenue Code, 26 U.S.C. 199A, an amount equal to the qualified business income deduction claimed; and

(j) for a taxpayer that deducts state income taxes pursuant to section 164(a)(3) of the Internal Revenue Code, 26 U.S.C. 164(a)(3), an additional amount equal to the state income tax deduction claimed, not to exceed the amount required to reduce the federal itemized amount computed under section 161 of the Internal Revenue Code, 26 U.S.C. 161, to the amount of the federal standard deduction allowable under section 63(c) of the Internal Revenue Code, 26 U.S.C. 63(c).

(3) To the extent they are included as income or gain or not already excluded as a deduction or expense in determining federal taxable income, the following are subtracted from federal taxable income:

(a) a deduction for an income distribution from an estate or trust to a beneficiary in accordance with sections 651 and 661 of the Internal Revenue Code, 26 U.S.C. 651 and 661, recalculated according to the additions and subtractions in subsections (2) and (3)(b) through (3)(m);

(b) if exempt from taxation by Montana under federal law:

(i) interest from obligations of the United States government and exempt-interest dividends attributable to that interest; and

(ii) railroad retirement benefits;

(c) (i) salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana;

(ii) the salary received by residents of Montana for active duty in the national guard. For the purposes of this subsection (3)(c)(ii), "active duty"

means duty performed under an order issued to a national guard member pursuant to:

(A) Title 10, U.S.C.; or

(B) Title 32, U.S.C., for a homeland defense activity, as defined in 32 U.S.C. 901, or a contingency operation, as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

(iii) the amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid;

(iv) the amount received by a beneficiary pursuant to 10-1-1201; and

(v) all payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law. Any income tax that has been or may be paid on income received from the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(d) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account provided for in Title 15, chapter 61, and any withdrawal for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder;

(e) contributions or earnings withdrawn from a family education savings account provided for in Title 15, chapter 62, or from a qualified tuition program established and maintained by another state as provided in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified education expenses, as defined in 15-62-103, of a designated beneficiary;

(f) interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a first-time home buyer savings account provided for in Title 15, chapter 63, and any withdrawal for payment of eligible costs for the first-time purchase of a single-family residence;

(g) for each taxpayer that has attained the age of 65, an additional subtraction of $5,500;

(h) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to 15-30-3104;

(i) a payment received by a private landowner for providing public access to public land pursuant to Title 76, chapter 17, part 1;

(j) the amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Montana income tax purposes;

(k) 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;

(l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing federal taxable income; ~~and~~

(m) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163*; and*

(n) payments from the Montana end of watch trust as provided in [section 2].

(4) (a) A taxpayer who, in determining federal taxable 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) (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 in section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce taxable 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 taxable income under this subsection (5)(a) 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 (2)(d) do not apply with respect to withdrawals of contributions that reduced federal taxable income.

(b) Contributions made pursuant to this subsection (5) are subject to the recapture tax provided for in 15-62-208.

(6) (a) An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state may reduce taxable 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 taxable income under this subsection (6)(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 (2)(d) do not apply with respect to withdrawals of contributions that reduced taxable income.

(b) Contributions made pursuant to this subsection (6) are subject to the recapture tax provided in 53-25-118.

(7) By November 1 of each year, the department shall multiply the subtraction from federal taxable income for a taxpayer that has attained the age of 65 contained in subsection (3)(g) by the inflation factor for that tax year, rounding the result to the nearest $10. The resulting amount is effective for that tax year and must be used as the basis for the subtraction from federal taxable income determined under subsection (3)(g)."

Section 10. 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, 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*; and*

(m) payments from the end of watch trust provided in [sections 1 through 6].

(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."

Section 11. Unfunded mandate laws superseded. The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

Section 12. Effective date. (1) Except as provided in subsection (2), [this act] is effective July 1, 2023.

(2) [Section 9] is effective January 1, 2024.

Section 13. Transfer of funds. There is transferred $10 million from the general fund to the end of watch trust established in [section 2] for the biennium beginning July 1, 2023. The legislature intends this as a one-time-only transfer.

Section 14. Appropriation. (1) There is appropriated up to $800,000 from the account established in [section 3] to the department of justice for the biennium beginning July 1, 2023, to make payments authorized under [section 3].

(2) The legislature intends that the appropriation in this section be considered part of the ongoing base for the next legislative session.

Section 15. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 2, chapter 15, section 20, and the provisions of Title 2, chapter 15, section 20, apply to [sections 1 through 6].

Section 16. Retroactive applicability. (1) [This act] applies retroactively, within the meaning of 1-2-109, to persons eligible for loss payments from the Montana end of watch trust pursuant to [section 3(2)] on or after July 1, 2013.

(2) Retroactive payments allowed in subsection (1) must be made for 5 years from July 1, 2023.

Approved May 19, 2023

CHAPTER NO. 670

[SB 295]

AN ACT REVISING LAWS RELATED TO THE REGULATION OF GRIZZLY BEARS ON DELISTING; ALLOWING THE FISH AND WILDLIFE COMMISSION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADOPT RULES PRIOR TO THE DELISTING OF GRIZZLY BEARS TO ALLOW LIVESTOCK OWNERS TO TAKE GRIZZLY BEARS ATTACKING OR KILLING LIVESTOCK AND TO ESTABLISH A QUOTA; ALLOWING LIVESTOCK OWNERS TO MAKE A COMPLAINT TO THE DIRECTOR OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS ABOUT GRIZZLY BEARS THREATENING LIVESTOCK; PROVIDING RULEMAKING AUTHORITY; PROVIDING A DEFINITION; AND AMENDING SECTIONS 87-5-301 AND 87-6-106, MCA.

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

Section 1. Section 87-5-301, MCA, is amended to read:

"**87-5-301. Grizzly bear -- findings -- policy.** (1) The legislature finds that:

(a) grizzly bears are a recovered population and thrive under responsive cooperative management;

(b) grizzly bear conservation is best served under state management and the local, state, tribal, and federal partnerships that fostered recovery; and

(c) successful conflict management is key to maintaining public support for conservation of the grizzly bear.

(2) It is the policy of the state to:

(a) manage the grizzly bear as a species in need of management to ~~avoid~~ *minimize* conflicts with humans and livestock; ~~and~~

(b) *on the delisting of grizzly bears from the federal Endangered Species Act, 16 U.S.C. 1531, et seq., manage grizzly bear populations at levels necessary to maintain delisted status to include management of mortalities from all sources, including take by livestock owners or other authorized persons under subsections (3) and (4) and the loss of bears by translocation out of the populations; and*

(c) subject to the provisions of ~~subsection~~ *subsections* (3) *and (4)*, use proactive management to ~~control~~ *manage* grizzly bear distribution and prevent conflicts, including *nonlethal and preventative measures as well as* trapping and lethal measures.

(3) Prior to delisting, the commission shall adopt rules to allow a livestock owner or other authorized person to take a grizzly bear at any time without a permit or license from the department when a grizzly bear is attacking or killing livestock. A livestock owner or other authorized person may take all nonlethal steps the livestock owner or authorized person considers necessary to protect the livestock owner's property. The rules adopted by the commission must:

(a) be consistent with the most recent state of Montana grizzly bear management plan, conservation strategies, including mortality thresholds, and the adaptive management principles of the commission and the department for the grizzly bear population;

(b) require a livestock owner or other authorized person who takes a grizzly bear pursuant to this subsection (3) to promptly report the taking of the grizzly bear to the department within 24 hours and to preserve the carcass of the grizzly bear;

(c) establish a quota each year for the total number of grizzly bears that may be taken pursuant to subsection (3) subject to mortality thresholds; and

(d) allow the commission to adjust quotas for the taking of grizzly bears pursuant to subsection (3) before a quota is reached if the commission determines the circumstances require adjustment of the total number of grizzly bears taken.

(4) On delisting, when a grizzly bear is threatening livestock, the livestock owner may make a complaint to the department director. The director or the director's designee shall investigate the complaint, and if it appears it is well-founded, the director or director's designee may:

(a) with permission from the livestock owner or other authorized person, send a department employee to the property to control, trap, or remove the grizzly bear or assist the livestock owner or other authorized person in removing any attractants or removing any other materials attracting grizzly bears to the property; or

(b) subject to the quota established by the commission in subsection (3)(c), issue a permit to the livestock owner or other authorized person to kill the grizzly bear. Any grizzly bear killed pursuant to a permit issued by the department as provided in this subsection (4)(b) must be reported to the department within 24 hours.

~~(3)~~*(5)* (a) Except as provided in subsection ~~(3)~~*(5)*(b), the department may not relocate a grizzly bear listed under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., except to a release site previously approved by the commission for relocation of grizzly bears.

(b) The department may respond to a grizzly bear listed under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., that is causing conflict outside of a federal recovery zone. If the bear is to be relocated, the department may not relocate the bear.

(c) To the greatest extent possible, the department and the commission shall prioritize genetic exchange between ecosystems when capturing and translocating a grizzly bear.

(6) As used in this section, "livestock" means cattle, swine, horses, mules, sheep, goats, llamas, donkeys, and livestock guard dogs."

Section 2. Section 87-6-106, MCA, is amended to read:

"**87-6-106. Lawful taking to protect livestock or person -- findings.** ~~(1) The legislature finds that the grizzly bear population in the state is recovered and should be removed from the federal endangered species list. The legislature also finds that the expanded grizzly bear population is moving into private property and residential areas causing increased conflict with livestock owners and presenting a human safety concern. The legislature further finds that Montana citizens have a right to protect themselves and their property and livestock from wild animals. Therefore, this chapter may not be construed to impose, by implication or otherwise, criminal liability pursuant to Montana law for the taking of wildlife protected by this title if the wildlife is attacking, killing, or threatening to kill a person or livestock.~~

~~(2)~~*(1)* A person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog.

~~(3)~~*(2)* A person who, under this section, takes wildlife protected by this title shall notify the department within 72 hours and shall surrender or arrange to surrender the wildlife to the department.

~~(4)~~*(3)* In accordance with the rights conferred on Montana citizens pursuant to Article II, sections 3 and 12, of the Montana constitution, the legislature finds the act of a grizzly bear attacking~~,~~ *or* killing~~, or threatening to kill~~ a person ~~or livestock~~ is an absolute defense against a person who takes a grizzly bear in accordance with this section being charged with a crime under Montana law. *Grizzly bears threatening, attacking, or killing livestock may only be taken as provided in 87-5-301.*

(4) When a grizzly bear poses a threat to a person through consistent presence or proximity to people or inhabited dwellings, the person may contact the department. If, on investigation, the department finds the grizzly bear is a threat, the department may control, trap, or remove the grizzly bear or issue a permit to the person to kill the grizzly bear to mitigate the threat to human safety.

(5) As used in this section, "livestock" means cattle, swine, horses, mules, sheep, goats, llamas, donkeys, and livestock guard dogs."

Approved May 19, 2023

CHAPTER NO. 671

[SB 322]

AN ACT REVISING LAWS RELATED TO COUNTY CENTRAL COMMITTEES; CHANGING THE NAME OF THE COUNTY CENTRAL COMMITTEE MEETING TO THE COUNTY CONVENTION; PROVIDING THAT THE RECORDS OF COUNTY AND CITY CENTRAL COMMITTEES ARE NOT PUBLIC RECORDS; REQUIRING PUBLIC ACCESS TO CENTRAL COMMITTEES THAT ARE FILLING ELECTION VACANCIES; AMENDING SECTIONS 13-38-203 AND 13-38-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-38-203, MCA, is amended to read:

"**13-38-203. Powers *and duties* of county and city central committees -- role of state central committee where no county central committee exists.** (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of each gender, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

(3) Meetings of a central committee that is filling an election vacancy pursuant to 13-10-326 or 13-10-327 must be open to the public. Records of a central committee regarding filling a vacancy pursuant to 13-10-326 or 13-10-327 must be made available for public inspection on request.

(4) County and city central committees are not public agencies of the state. The documents of the county and city central committees are not public records."

Section 2. Section 13-38-205, MCA, is amended to read:

"**13-38-205. Organization and operation of *county and city central* ~~committee~~ *committees.*** (1) The *county central* committee shall meet prior to the state convention of its political party and organize by electing a presiding officer and one or more vice presiding officers. The gender of the presiding officer and the vice presiding officer may not be the same. The *county central* committee shall elect a secretary and other officers as necessary. It is not necessary for the officers to be precinct committee representatives.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The presiding officer of the county central committee shall call the ~~central committee meeting~~ *county convention* and not less than 4 days before the date of the ~~central committee meeting~~ *county convention* shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committee representative. If party rules permit the use of a proxy, a proxy may not be recognized unless it is held by an elector of the precinct of the committee representative executing it.

(4) The county presiding officer of the party shall preside at the county convention. No person other than a duly elected or appointed committee representative or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committee representative is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The presiding officer and secretary of the county convention shall issue and sign certificates of election of the delegates."

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

Approved May 19, 2023

CHAPTER NO. 672

[HB 325]

AN ACT REVISING THE DISABLED VETERAN PROPERTY TAX ASSISTANCE PROGRAM; PROVIDING FOR CONTINUED ELIGIBILITY WHEN UNUSUAL INCREASES IN INCOME OCCUR; AMENDING SECTION 15-6-302, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-6-302, MCA, is amended to read:

"**15-6-302. Property tax assistance -- rulemaking.** (1) The requirements of this section must be met for a taxpayer to qualify for property tax assistance under 15-6-305 or 15-6-311.

(2) For the property tax assistance programs provided for in 15-6-305 and 15-6-311, the residential real property must be owned by the applicant or under contract for deed and be the primary residence as defined in 15-6-301. The department shall make rules specifying the indicators used for determining whether a residence is a primary residence for purposes of property tax assistance programs.

(3) An applicant's qualifying income, as defined in 15-6-301, may not exceed the threshold established in 15-6-305 or 15-6-311 or in rules established pursuant to those sections.

(4) (a) A claim for assistance must be submitted on a form prescribed by the department.

(b) The form must contain:

(i) the qualifying income of the applicant and the applicant's spouse;

(ii) an affirmation that the applicant owns and maintains the land and improvements as the primary residence as defined in 15-6-301;

(iii) the social security number of the applicant and of the applicant's spouse; and

(iv) any other information required by the department that is relevant to the applicant's eligibility.

(5) (a) An application must be filed by April 15 of the year for which assistance is first claimed.

(b) Once assistance is approved, the applicant remains eligible for property tax assistance in subsequent years through the annual verification process defined in 15-6-301 without the need to reapply.

(c) A taxpayer shall inform the department of any change in eligibility occurring from one year to the next.

(6) The department may verify an applicant's and an applicant's spouse's social security number and benefits with the social security administration and the U.S. department of veterans affairs.

(7) The department must annually verify an applicant's eligibility, including the applicant's and spouse's income, and approve, renew, or deny benefits for the current year based upon the findings.

(8) (a) When providing information for property tax assistance under 15-6-305 or 15-6-311, applicants are subject to the false swearing penalties established in 45-7-202.

(b) The department may investigate the information provided in an application and an applicant's continued eligibility.

(c) The department may request applicant verification of the primary residence.

(9) The department may address unusual circumstances of ownership and income that arise in administering taxpayer assistance programs provided for in 15-6-305 and 15-6-311. *For the disabled veteran program provided for in 15-6-311, "unusual circumstances" includes:*

(a) living expenses and income above normal and typical annual income used for funeral expenses or medical expenses, including medical expenses related to rehabilitation expenses, nontypical medical expenses, or major medical expenses of an immediate family member;

(b) unusual expenditures for necessary home and living expenses, such as major home repairs, vehicle replacement, and education or career training; and

(c) any other unusual factual circumstances regarding ownership and income.

(10) A temporary stay in a nursing home or similar facility does not change a taxpayer's primary residence for the purposes of taxpayer assistance programs provided for in 15-6-305 and 15-6-311.

(11) The department shall award property assistance under the property tax assistance program that provides the greatest benefit to the taxpayer by reviewing applications and eligibility requirements, and notify the applicant of the department's decision."

Section 2. Applicability. [This act] applies to property tax years beginning after December 31, 2023.

Approved May 19, 2023