

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

Enacted or Passed by the

**SIXTY-SECOND LEGISLATURE
IN REGULAR SESSION**

**Held at Helena, the Seat of Government
January 3, 2011, through April 28, 2011**

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**OFFICERS AND MEMBERS
OF THE MONTANA SENATE**

2011

50 Members

28 Republicans

22 Democrats

OFFICERS

PresidentJim Peterson
 President Pro TemporeBruce Tutvedt
 Majority LeaderJeff Essmann
 Majority WhipsTaylor Brown, Chas Vincent
 Minority LeaderCarol Williams
 Minority WhipKim Gillan
 Secretary of the SenateMarilyn Miller
 Sergeant at ArmsNancy Clark

MEMBERS

Name	Party	District	Preferred Mailing Address
Arthun, Ron	R	31	285 Shields River Rd, Wilsall MT 59086-9446
Augare, Shannon	D	8	PO Box 909, Browning MT 59417-0909
Balyeat, Joe	R	34	6909 Rising Eagle Rd, Bozeman MT 59715-8621
Barrett, Debby	R	36	18580 MT Highway 324, Dillon MT 59725-8031
Blewett, Anders	D	11	PO Box 2807, Great Falls MT 59403-2807
Branae, Gary	D	27	415 Yellowstone Ave, Billings MT 59101-1730
Brenden, John	R	18	PO Box 970, Scobey MT 59263-0970
Brown, Taylor	R	22	775 Squaw Creek Rd, Huntley MT 59037-9219
Buttrey, Edward	R	13	27 Granite Hill Ln, Great Falls MT 59405-8041
Caferro, Mary	D	40	607 N Davis St, Helena MT 59601-3737
Erickson, Ron	D	47	3250 Pattee Canyon Rd, Missoula MT 59803-1703
Essmann, Jeff	R	28	PO Box 80945, Billings MT 59108-0945
Facey, Tom	D	48	418 Plymouth St, Missoula MT 59801-4133
Gallus, Steve	D	37	2319 Harvard Ave, Butte MT 59701-3854
Gillan, Kim	D	24	750 Judicial Ave, Billings MT 59105-2130
Hamlett, Bradley Maxon	D	10	PO Box 49, Cascade MT 59421-0049
Hawks, Bob	D	33	703 W Koch St, Bozeman MT 59715-4477
Hinkle, Greg	R	7	5 Gable Rd, Thompson Falls MT 59873-8512
Hutton, Rowlie	R	17	2 Lila Dr, Havre MT 59501-5245
Jackson, Verdell	R	5	555 Wagner Ln, Kalispell MT 59901-8079
Jent, Larry	D	32	1201 S 3rd St, Bozeman MT 59715-5503
Jones, Llew	R	14	1102 4th Ave SW, Conrad MT 59425-1919
Kaufmann, Christine	D	41	825 Breckenridge St, Helena MT 59601-4433
Keane, Jim	D	38	2131 Wall St, Butte MT 59701-5527
Lake, Bob	R	44	PO Box 2096, Hamilton MT 59840-2096
Larsen, Cliff	D	50	8925 Lavalley Creek Rd, Missoula MT 59808-9324
Lewis, Dave	R	42	5871 Collins Rd, Helena MT 59602-9584
Moore, Frederick (Eric)	R	20	487 Signal Butte Rd, Miles City MT 59301-9205
Moss, Lynda	D	26	552 Highland Park Dr, Billings MT 59102-1046
Mowbray, Carmine	R	6	PO Box 1202, Polson MT 59860-1202
Murphy, Terry	R	39	893 Boulder Cutoff Rd, Cardwell MT 59721-9605
Olson, Alan	R	23	18 Halfbreed Creek Rd, Roundup MT 59072-6524
Peterson, Jim	R	15	1250 Buffalo Canyon Rd, Buffalo MT 59418-8001
Priest, Jason	R	30	PO Box 743, Red Lodge MT 59068-0743
Ripley, Rick	R	9	8920 MT Highway 200, Wolf Creek MT 59648-8639
Shockley, Jim	R	45	PO Box 608, Victor MT 59875-0608
Sonju, Jon	R	4	PO Box 2954, Kalispell MT 59903-2954
Steinbeisser, Donald	R	19	11918 County Rd 348, Sidney MT 59270-9620
Stewart-Peregoy, Sharon	D	21	PO Box 211, Crow Agency MT 59022-0211

Tropila, Mitch	D	12	PO Box 929, Great Falls MT 59403-0929
Tutvedt, Bruce	R	3	2335 W Valley Dr, Kalispell MT 59901-6958
Van Dyk, Kendall	D	25	PO Box 441, Billings MT 59103-0441
Vincent, Chas	R	1	34 Paul Bunyan Ln, Libby MT 59923-7990
Vuckovich, Gene	D	43	1205 W 3rd St, Anaconda MT 59711-1801
Walker, Edward	R	29	4221 Rimrock Rd, Billings MT 59106-1420
Wanzenried, David	D	49	903 Sky Dr, Missoula MT 59804-3121
Williams, Carol	D	46	3533 Lincoln Hills Pt, Missoula MT 59802-3381
Windy Boy, Jonathan	D	16	PO Box 269, Box Elder MT 59521-0269
Wittich, Art	R	35	3116 Sourdough Rd, Bozeman MT 59715-9260
Zinke, Ryan	R	2	409 W 2nd St, Whitefish MT 59937-3010

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

2011

100 Members

68 Republicans

32 Democrats

OFFICERS

SpeakerMike Milburn
 Speaker Pro TemporeJanna Taylor
 Majority LeaderTom McGillvray
 Majority WhipsJerry Bennett, Keith Regier, Cary Smith, Wendy Warburton
 Minority LeaderJon Sesso
 Minority Caucus LeaderBetsy Hands
 Minority WhipsChuck Hunter, Margaret MacDonald
 Chief Clerk of the HouseBeth Cargo
 Sergeant at ArmsRussell Bean

MEMBERS

Name	Party	District	Preferred Mailing Address
Ankney, Duane	R	43	PO Box 2138, Colstrip MT 59323-2138
Arntzen, Elsie	R	53	2323 Azalea Ln, Billings MT 59102-2516
Bangerter, Liz	R	80	3419 Blackhawk St, Helena MT 59602-0550
Barrett, Dick	D	93	219 Agnes Ave, Missoula MT 59801-8730
Beck, Bill	R	6	PO Box 2049, Whitefish MT 59937-2049
Belcourt, Tony	D	32	PO Box 192, Box Elder MT 59521-0192
Bennett, Bryce	D	92	430 S 5th St E Apt C9, Missoula MT 59801-2855
Bennett, Jerry	R	1	784 Taylor Rd, Libby MT 59923-8458
Berry, Tom	R	45	PO Box 157, Roundup MT 59072-0157
Blasdel, Mark	R	10	PO Box 291, Somers MT 59932-0291
Blyton, Joanne	R	59	6 Gray Ln, Joliet MT 59041-9594
Boland, Cydnie (Carlie)	D	23	1215 6th Ave N, Great Falls MT 59401-1601
Brodehl, Randy	R	7	16 White Bark, Kalispell MT 59901-2122
Burnett, Tom	R	63	4143 Rain Roper Dr, Bozeman MT 59715-0634
Clark, Christy	R	17	PO Box 423, Choteau MT 59422-0423
Connell, Pat	R	87	567 Tiffany Ln, Hamilton MT 59840-9241
Cook, Rob	R	27	223 1st Ave SW, Conrad MT 59425-1805
Court, Virginia	D	52	18 Heatherwood Ln, Billings MT 59102-2449
Cuffe, Mike	R	2	PO Box 1685, Eureka MT 59917-1685
Driscoll, Robyn	D	51	404 Houle Dr, Billings MT 59102-4861
Edmunds, Champ	R	100	PO Box 17612, Missoula MT 59808-7612
Ehli, Ron	R	88	PO Box 765, Hamilton MT 59840-0765
Esp, John	R	61	PO Box 1024, Big Timber MT 59011-1024
Evans, Lila	R	16	PO Box 302, Browning MT 59417-0302
Fitzpatrick, Steve	R	20	3203 15th Ave S, Great Falls MT 59405-5416
Flynn, Kelly	R	68	PO Box 233, Townsend MT 59644-0233
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Gibson, Steve	R	78	2665 Stagecoach Dr, East Helena MT 59635-3434
Greef, Edward	R	90	PO Box 1327, Florence MT 59833-1327
Hale, Alan	R	77	PO Box 70, Basin MT 59631-0070
Hands, Betsy	D	99	216 South Ave W, Missoula MT 59801-8114
Hansen, Kristin	R	33	Havre MT 59501
Harris, Bill	R	30	2009 Old Stage Rd, Mosby MT 59058-9604
Hendrick, Gordon	R	14	PO Box 262, Superior MT 59872-0262
Hill, Ellie Boldman	D	94	131 S Higgins Ave Apt 6-1, Missoula MT 59802-4439
Hiner, Cynthia	D	85	1027 Kentucky St, Deer Lodge MT 59722-2041

Hollandsworth, Roy	R	28	1463 Prairie Dr, Brady MT 59416-8928
Hollenbaugh, Galen	D	81	PO Box 902, Helena MT 59624-0902
Hoven, Brian	R	24	1501 Meadowlark Dr, Great Falls MT 59404-3325
Howard, David	R	60	PO Box 129, Park City MT 59063-0129
Hunter, Chuck	D	79	717 Dearborn Ave, Helena MT 59601-2712
Ingraham, Pat	R	13	PO Box 1151, Thompson Falls MT 59873-1151
Kary, Douglas	R	48	415 W Wicks Ln, Billings MT 59105-3457
Kennedy, Dan	R	57	PO Box 1216, Laurel MT 59044-1216
Kerns, Krayton	R	58	1408 Golf Course Rd, Laurel MT 59044-3600
Klock, Harry	R	83	PO Box 308, Harlowton MT 59036-0308
Knox, James	R	47	661 Garnet Ave, Billings MT 59105-3003
Knudsen, Austin	R	36	PO Box 624, Culbertson MT 59218-0624
Lavin, Steve	R	8	PO Box 11241, Kalispell MT 59904-4241
Loney, Cleve	R	25	93 Brandy Wine Ln, Great Falls MT 59404-6118
MacDonald, Margaret	D	54	4111 June Dr, Billings MT 59106-1565
MacLaren, Gary	R	89	429 Curlew Orchard Rd, Victor MT 59875-9519
Malek, Sue	D	98	1400 Prairie Way, Missoula MT 59802-3420
McChesney, Bill	D	40	316 Missouri Ave, Miles City MT 59301-4140
McClafferty, Edith (Edie)	D	75	1311 Stuart Ave, Butte MT 59701-5014
McGillvray, Tom	R	50	3642 Donna Dr, Billings MT 59102-1119
McNally, Mary	D	49	PO Box 20584, Billings MT 59104-0584
McNiven, Jonathan	R	44	3445 Rock Pillar Rd, Huntley MT 59037-9237
McNutt, Walter	R	37	110 12th Ave SW, Sidney MT 59270-3614
Mehlhoff, Robert	D	26	407 9th St NW, Great Falls MT 59404-2333
Menahan, Mike	D	82	40 Olive St, Helena MT 59601-6285
Milburn, Mike	R	19	276 Chestnut Valley Rd, Cascade MT 59421-8204
Miller, Mike	R	84	20906 MT Highway 141, Helmsville MT 59843-9025
More, Michael	R	70	450 N Low Bench Rd, Gallatin Gateway MT 59730-8546
Noonan, Pat	D	73	PO Box 90, Ramsay MT 59748-0090
O'Hara, Jesse	R	18	2221 Holly Ct, Great Falls MT 59404-3562
O'Neil, Jerry	R	3	985 Walsh Rd, Columbia Falls MT 59912-9044
Osmundson, Ryan	R	29	2288 U Bet Rd, Buffalo MT 59418-8101
Pease-Lopez, Carolyn	D	42	5723 US Highway 87 E, Billings MT 59101-9074
Peterson, Ken	R	46	424 48th St W, Billings MT 59106-2306
Phillips, Mike	D	66	9 W Arnold St, Bozeman MT 59715-6127
Price, Jean	D	21	422 15th St S, Great Falls MT 59405-2424
Randall, Lee	R	39	101 Randall Ln, Broadus MT 59317-9519
Read, Joe	R	15	35566 Terrace Lake Rd, Ronan MT 59864-2435
Regier, Keith	R	5	1078 Stillwater Rd, Kalispell MT 59901-6902
Reichner, Scott	R	9	78 Redtail Rdg, Bigfork MT 59911-6283
Reinhart, Michele	D	97	PO Box 5945, Missoula MT 59806-5945
Roberts, Don	R	56	5414 Walter Hagen Dr, Billings MT 59106-1007
Rosendale, Matthew	R	38	1954 Highway 16, Glendive MT 59330-9218
Salomon, Daniel	R	12	42470 Salomon Rd, Ronan MT 59864-9272
Sands, Diane	D	95	4487 Nicole Ct, Missoula MT 59803-2791
Schmidt, Trudi	D	22	4029 6th Ave S, Great Falls MT 59405-3746
Sesso, Jon	D	76	811 W Galena St, Butte MT 59701-1540
Skattum, Dan	R	62	2148 E River Rd, Livingston MT 59047-9126
Skees, Derek	R	4	PO Box 5331, Whitefish MT 59937-5331
Small, Sterling	R	41	HC 42 Box 667, Busby MT 59016-9709
Smith, Cary	R	55	5522 Billy Casper Dr, Billings MT 59106-1029
Smith, Frank	D	31	PO Box 729, Poplar MT 59255-0729
Squires, Carolyn	D	96	2111 S 10th St W, Missoula MT 59801-3412
Stahl, Wayne	R	35	PO Box 345, Saco MT 59261-0345
Swanson, Kathy	D	86	308 E 6th St, Anaconda MT 59711-3016
Taylor, Janna	R	11	PO Box 233, Dayton MT 59914-0233
Vance, Gordon	R	67	305 Stillwater Ave, Bozeman MT 59718-1917
Wagner, Bob	R	71	PO Box 191, Harrison MT 59735-0191
Warburton, Wendy	R	34	Havre MT 59501
Washburn, Ted	R	69	612 Candlelight Dr, Bozeman MT 59718-7255
Welborn, Jeffrey	R	72	245 Clarks Lookout Rd, Dillon MT 59725-8234
Williams, Kathleen	D	65	PO Box 548, Bozeman MT 59771-0548
Wilmer, Franke	D	64	541 E Mendenhall St, Bozeman MT 59715-3728
Yates, Max	R	74	PO Box 3685, Butte MT 59702-3685

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253	(<i>House Bill No. 538; Peterson</i>) ALLOWING LOCAL GOVERNMENT BONDS TO BE SOLD AT PUBLIC OR PRIVATE SALE; ESTABLISHING A MINIMUM SALE PRICE; AMENDING SECTIONS 7-7-2212, 7-7-2238, 7-7-2251, 7-7-2252, 7-7-2254, 7-7-4211, 7-7-4236, 7-7-4251, 7-7-4252, 7-7-4254, 7-7-4433, 7-7-4434, 7-10-220, 7-10-221, 7-12-2172, 7-12-4204, 7-14-4652, 7-15-4507, 7-31-113, 20-9-429, 20-9-430, 20-9-431, 20-9-432, 85-7-1436, 85-7-1437, 85-7-2022, 85-7-2023, 85-7-2033, 85-8-503, AND 85-9-625, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.	984
254	(<i>House Bill No. 541; Welborn</i>) PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM REGULATING DOMESTIC LIVESTOCK TRAILING AS A COMMERCIAL ACTIVITY; EXEMPTING DOMESTIC LIVESTOCK TRAILING FROM THE MONTANA ENVIRONMENTAL POLICY ACT; AUTHORIZING DOMESTIC LIVESTOCK TRAILING ACROSS LANDS DESIGNATED AS WILDLIFE MANAGEMENT AREAS; AMENDING SECTIONS 87-1-301 AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	995
255	(<i>House Bill No. 552; Hale</i>) REVISING WORKERS' COMPENSATION LAWS RELATED TO CERTAIN PUBLIC SAFETY VOLUNTEERS; ALLOWING LEVIES USED TO FUND PUBLIC SAFETY VOLUNTEERS' DISABILITY INCOME INSURANCE TO BE USED ALTERNATIVELY FOR WORKERS' COMPENSATION COVERAGE; PROVIDING COVERAGE FOR VOLUNTEER EMERGENCY MEDICAL SERVICE PROVIDERS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 7-6-621, 7-33-2109, 7-33-2209, 7-33-2403, 7-33-4109, 7-33-4111, 7-34-102, 39-71-118, AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE	998
256	(<i>House Bill No. 602; McNutt</i>) ESTABLISHING A PROCESS FOR THE LEGISLATURE TO PROVIDE DIRECTION FOR THE IMPLEMENTATION OF EXEMPT WELL LAWS; REQUIRING AN	

	INTERIM STUDY OF ISSUES RELATED TO GROUND WATER WELLS EXEMPT FROM PERMITTING; TEMPORARILY PROHIBITING RULEMAKING FOR WELLS EXEMPT FROM PERMITTING; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.	1007
257	(<i>Senate Bill No. 30; Wanzenried</i>) REVISING THE COLLECTION REQUIREMENTS UNDER THE STATE SUPERFUND LAWS; REQUIRING LIABLE PARTIES TO PAY INTEREST IF MONTHLY BILLS FOR REMEDIAL ACTION COSTS ARE NOT PAID WITHIN 30 DAYS; AMENDING SECTION 75-10-722, MCA; AND PROVIDING AN EFFECTIVE DATE	1009
258	(<i>Senate Bill No. 124; Ripley</i>) REORGANIZING AND RECODIFYING FISH AND GAME CODE CRIMINAL STATUTES AND DEFINITIONS; CLARIFYING PENALTIES; AMENDING SECTIONS 45-6-101, 45-6-203, 81-2-121, 87-1-120, 87-1-232, 87-1-234, 87-1-601, 87-1-803, 87-1-804, 87-2-101, 87-2-104, 87-2-106, 87-2-202, 87-2-411, 87-2-521, 87-2-807, 87-3-110, 87-3-121, 87-3-126, 87-3-204, 87-3-221, 87-3-222, 87-3-224, 87-3-403, 87-4-201, 87-4-306, 87-4-407, 87-4-427, 87-4-601, 87-4-609, 87-4-803, 87-4-807, 87-4-903, 87-4-915, 87-4-1002, 87-5-204, 87-5-703, AND 87-5-721, MCA; AND REPEALING SECTIONS 87-1-102, 87-1-108, 87-1-109, 87-1-110, 87-1-111, 87-1-112, 87-1-113, 87-1-114, 87-1-115, 87-1-121, 87-1-125, 87-1-208, 87-1-231, 87-2-103, 87-2-109, 87-2-110, 87-2-112, 87-2-114, 87-2-120, 87-2-203, 87-2-205, 87-2-509, 87-2-604, 87-2-804, 87-3-101, 87-3-102, 87-3-103, 87-3-104, 87-3-105, 87-3-107, 87-3-108, 87-3-109, 87-3-111, 87-3-112, 87-3-116, 87-3-117, 87-3-118, 87-3-123, 87-3-124, 87-3-125, 87-3-130, 87-3-134, 87-3-135, 87-3-141, 87-3-142, 87-3-143, 87-3-144, 87-3-205, 87-3-206, 87-3-207, 87-3-209, 87-3-301, 87-3-302, 87-3-304, 87-3-305, 87-3-306, 87-3-307, 87-3-401, 87-3-402, 87-3-404, 87-3-405, 87-3-501, 87-3-503, 87-3-504, 87-3-505, 87-3-506, 87-3-507, 87-4-608, AND 87-4-1014, MCA	1010
259	(<i>Senate Bill No. 146; Lake</i>) DECLARING THAT CERTAIN TRANSFER FEE COVENANTS DO NOT RUN WITH THE TITLE TO REAL PROPERTY AND ARE UNENFORCEABLE AT LAW OR IN EQUITY AGAINST A SUBSEQUENT OWNER, PURCHASER, OR MORTGAGEE OF REAL PROPERTY AS A COVENANT, AN EQUITABLE SERVITUDE, OR OTHERWISE; DECLARING THAT A LIEN FILED AGAINST REAL PROPERTY TO ENFORCE THE PAYMENT OF A TRANSFER FEE IS VOID AND UNENFORCEABLE; AMENDING SECTION 70-17-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	1078
260	(<i>Senate Bill No. 218; Steinbeisser</i>) ESTABLISHING PROCEDURES FOR SAMPLING PLANTS PROTECTED BY PATENT OR OTHER INTELLECTUAL PROPERTY LAWS; ALLOWING CONFIDENTIALITY; REQUIRING MEDIATION OF CLAIMS INVOLVING PROTECTED PLANTS; PROVIDING AN EXCEPTION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1080
261	(<i>Senate Bill No. 219; Branae</i>) REVISING THE PROVISIONS RELATED TO ACCESS TO PROTESTED PROPERTY TAXES; REVISING THE PROVISIONS RELATED TO A SCHOOL DISTRICT'S ELECTION ON WHETHER TO WAIVE THE DISTRICT'S RIGHT TO RECEIVE ITS PORTION OF THE PROTESTED TAXES UPON SETTLEMENT OF THE TAX PROTEST; PROVIDING THAT THE ELECTION APPLIES ONLY TO CENTRALLY ASSESSED PROPERTY AND INDUSTRIAL PROPERTY THAT IS ASSESSED ANNUALLY BY THE DEPARTMENT; ALLOWING LOCAL TAXING JURISDICTIONS TO ACCESS PROTESTED TAXES OF CENTRALLY ASSESSED INDUSTRIAL PROPERTY; REVISING THE	

	CALCULATION OF GUARANTEED TAX BASE AID FOR A DISTRICT THAT ELECTS TO WAIVE ITS RIGHT TO RECEIVE ITS PORTION OF CENTRALLY ASSESSED PROTESTED TAXES; AMENDING SECTIONS 15-1-402, 15-1-409, AND 20-9-366, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.	1083
262	(<i>Senate Bill No. 242; Brenden</i>) REVISING WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF "EMPLOYEE" WITH RESPECT TO AGRICULTURE EMPLOYMENT; AMENDING SECTION 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE	1088
263	(<i>Senate Bill No. 246; Olson</i>) CLARIFYING THE PETITION PROCESS OF A REGULATED TELECOMMUNICATION SERVICES PROVIDER FOR SUBMITTING A PLAN FOR AN ALTERNATIVE FORM OF REGULATION; ELIMINATING CERTAIN REQUIREMENTS ASSOCIATED WITH A PROPOSED ORDER MODIFYING A PLAN FOR AN ALTERNATIVE FORM OF REGULATION; AMENDING SECTION 69-3-809, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1092
264	(<i>Senate Bill No. 285; Olson</i>) REQUIRING THE MONITORING OF CARBON DIOXIDE INJECTION WELLS FOR 50 YEARS UNLESS AN ALTERNATIVE TIMEFRAME IS APPROVED BY THE BOARD OF OIL AND GAS CONSERVATION; REQUIRING AN OPERATOR TO CONTINUE TO ACCEPT LIABILITY FOR A CARBON DIOXIDE STORAGE RESERVOIR AND THE STORED CARBON FOR A MINIMUM OF 30 YEARS; AMENDING SECTION 82-11-183, MCA; AND PROVIDING AN EFFECTIVE DATE.	1094
265	(<i>Senate Bill No. 288; Gillan</i>) ALLOWING ASSESSMENTS OF A SPECIAL DISTRICT TO BE APPEALED TO THE ADMINISTRATIVE BOARD OF THE DISTRICT; AND AMENDING SECTION 7-11-1027, MCA	1096
266	(<i>Senate Bill No. 357; Hamlett</i>) PROHIBITING A RESIGNING MEMBER OF A BOARD OF COUNTY COMMISSIONERS FROM PARTICIPATING IN FILLING THE VACANCY TO BE CREATED BY THE RESIGNATION; AMENDING SECTIONS 2-16-501 AND 7-4-2106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1097
267	(<i>Senate Bill No. 367; Vincent</i>) AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE INDIVIDUAL, GENERAL, AND ALTERNATIVE NUTRIENT STANDARDS VARIANCES TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ALLOWING INFORMATION RELATED TO BASE NUMERIC NUTRIENT STANDARDS OR NUTRIENT STANDARDS VARIANCES TO BE CONFIDENTIAL; AND AMENDING SECTIONS 75-5-103, 75-5-105, AND 75-5-313, MCA.	1100
268	(<i>Senate Bill No. 374; Olson</i>) REVISING LAWS RELATED TO CANDIDATES FOR PRECINCT COMMITTEE REPRESENTATIVES OF EACH PARTY; CLARIFYING THE PROCESS FOR FILLING A VACANCY IN A PRECINCT COMMITTEE POSITION; AND AMENDING SECTION 13-38-201, MCA	1111
269	(<i>Senate Bill No. 413; Balyeat</i>) CLARIFYING THE DUE DATE OF INDIVIDUAL INCOME TAX RETURNS AND CORPORATION LICENSE OR INCOME TAX RETURNS WHEN THE DUE DATE OF THE RETURN FALLS ON CERTAIN FEDERAL HOLIDAYS OR FEDERALLY DECLARED DISASTERS NOT OBSERVED IN MONTANA; AMENDING SECTIONS 15-30-2504, 15-30-2512, 15-30-2604, 15-30-3302, 15-31-101, 15-31-111, 15-31-141, AND 15-31-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE	1112

270	(<i>House Bill No. 188; Loney</i>) GENERALLY REVISING LAWS GOVERNING REAL ESTATE APPRAISERS; REVISING DEFINITIONS; PROVIDING FOR REGULATION OF APPRAISAL MANAGEMENT COMPANIES; GOVERNING RELATIONSHIPS BETWEEN APPRAISAL MANAGEMENT COMPANIES AND APPRAISERS; EXPANDING RULEMAKING AUTHORITY OF THE BOARD OF REAL ESTATE APPRAISERS; AND AMENDING SECTIONS 37-54-102 AND 37-54-105, MCA.	1121
271	(<i>House Bill No. 327; McClafferty</i>) REVISING SCHOOL ADMINISTRATION LAWS; ESTABLISHING A WITHDRAWAL DATE FOR SCHOOL DISTRICT TRUSTEE ELECTIONS; PROVIDING WHO MAY ADMINISTER AN OATH OF OFFICE TO A SCHOOL DISTRICT TRUSTEE; CLARIFYING THE STATUS OF A SINGLE-MEMBER TRUSTEE DISTRICT AND A TRUSTEE NOMINATING DISTRICT IN AN ELECTION BY ACCLAMATION; REQUIRING TRUSTEES OF EACH DISTRICT TO ORGANIZE AS A GOVERNING BOARD NO LATER THAN 15 DAYS AFTER ELECTION DAY; CLARIFYING THE CALCULATION OF MAXIMUM ALLOWABLE INDEBTEDNESS FOR CERTAIN SCHOOL DISTRICTS; ELIMINATING REFERENCE TO AN INTEREST RATE ON SCHOOL DISTRICT BOND ELECTION BALLOTS; AMENDING SECTIONS 20-3-305, 20-3-307, 20-3-313, 20-3-321, 20-9-406, 20-9-426, 20-9-427, AND 20-9-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1129
272	(<i>Senate Bill No. 135; Balyeat</i>) AUTHORIZING THE USE OF CONTROLLED DOGS TO TRACK WOUNDED GAME ANIMALS; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1134
273	(<i>Senate Bill No. 138; Jones</i>) RESTRICTING THE STATUTORY APPROPRIATION FROM THE GENERAL FUND FOR THE BOARD OF REGENTS' SHARE OF THE OPTIONAL RETIREMENT TO EMPLOYEES WHOSE COMPENSATION IS PAID FROM THE CURRENT UNRESTRICTED SUBFUND; AMENDING SECTION 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE	1135
274	(<i>Senate Bill No. 149; Essmann</i>) CREATING THE OFFENSE OF PREDATORY LOITERING APPLICABLE TO PERSONS PREVIOUSLY CONVICTED OF A SEXUAL OFFENSE; AND PROVIDING A PENALTY	1136
275	(<i>Senate Bill No. 327; Larsen</i>) REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE AND THE WATER POLICY INTERIM COMMITTEE ON FEASIBILITY STUDIES CURRENTLY REQUIRED UNDER LAW TO ASSESS WATER PROJECTS OWNED OR CONTROLLED BY THE STATE FOR ELECTRICITY GENERATION POTENTIAL; CLARIFYING THE ECONOMIC FEASIBILITY CRITERIA THAT THE DEPARTMENT IS REQUIRED TO CONSIDER IN STUDYING PROJECTS; AMENDING SECTION 85-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1137
276	(<i>Senate Bill No. 382; Gillan</i>) REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE CERTAIN INFORMATION CONCERNING CENTRALLY ASSESSED PROPERTY TO TAXPAYERS	1138
277	(<i>Senate Bill No. 389; Van Dyk</i>) ALLOWING A BREWERY TO IMPORT OR PURCHASE NECESSARY NONBEVERAGE INGREDIENTS CONTAINING ALCOHOL AS INGREDIENTS FOR BLENDING OR MANUFACTURING PURPOSES; REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH CONDITIONS FOR THE IMPORTATION OR	

	PURCHASE; PROVIDING THAT THE NONBEVERAGE INGREDIENTS FOR USE BY A BREWERY AND DISTILLED SPIRIT INGREDIENTS FOR A DISTILLERY OR A MICRODISTILLERY ARE EXEMPT FROM STATE TAXES AND MARKUP; DECREASING THE MINIMUM ALCOHOL CONTENT APPLICABLE TO DISTILLERIES; AND AMENDING SECTIONS 16-1-401, 16-1-404, 16-3-214, AND 16-4-311, MCA.	1139
278	<i>(House Bill No. 618; Pease-Lopez)</i> ESTABLISHING PROPERTY TAX EXEMPTIONS FOR CERTAIN PROPERTY OWNED BY FEDERALLY RECOGNIZED INDIAN TRIBES; AMENDING SECTIONS 15-6-201, 41-3-201, 61-3-321, AND 61-10-214, MCA; AND PROVIDING AN APPLICABILITY DATE	1142
279	<i>(Senate Bill No. 59; Moss)</i> PROVIDING FOR A MURAL THAT HONORS THE HISTORY OF MONTANA WOMEN AS COMMUNITY BUILDERS; AMENDING SECTION 2-17-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1150
280	<i>(Senate Bill No. 319; Essmann)</i> REVISING CHILD SAFETY RESTRAINT STANDARDS; WAIVING THE FINE FOR VIOLATION OF THE CHILD RESTRAINT REQUIREMENT UNDER CERTAIN CONDITIONS; ELIMINATING THE SECONDARY ENFORCEMENT RESTRICTION FOR CERTAIN RESTRAINT VIOLATIONS; AMENDING SECTIONS 61-9-420, 61-9-423, AND 61-13-103, MCA; AND PROVIDING AN EFFECTIVE DATE	1152
281	<i>(House Bill No. 3; Mehlhoff)</i> APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1154
282	<i>(Senate Bill No. 15; Jent)</i> ESTABLISHING THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE; PROVIDING PENALTIES; AMENDING SECTIONS 61-8-101, 61-8-402, 61-8-404, 61-8-409, 61-8-714, 61-8-722, 61-8-731, AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES	1154
283	<i>(Senate Bill No. 42; Shockley)</i> REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	1163
284	<i>(Senate Bill No. 238; Blewett)</i> INCREASING JURISDICTIONAL LIMITS FOR JUSTICES' COURTS, CITY COURTS, AND SMALL CLAIMS COURTS; AMENDING SECTIONS 3-10-301, 3-10-1004, 3-11-103, 7-1-4151, 25-35-502, 25-35-503, 25-35-606, AND 75-7-123, MCA; AND PROVIDING AN EFFECTIVE DATE.	1167
285	<i>(Senate Bill No. 333; Shockley)</i> CONFORMING MONTANA LAW TO THE 2008 AMENDMENTS TO THE UNIFORM PRINCIPAL AND INCOME ACT; CHANGING THE MARITAL DEDUCTION REQUIREMENTS TO ALLOW A TRUST TO QUALIFY FOR THE FEDERAL MARITAL DEDUCTION REQUIREMENTS; PROVIDING FOR THE ALLOCATION OF TAXABLE INCOME FOR THE DETERMINATION OF TAXES ON UNDISTRIBUTED ENTITY TAXABLE INCOME; PROVIDING A	

	TRANSITION PROVISION; AMENDING SECTIONS 72-34-441 AND 72-34-452, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . .	1172
286	<i>(Senate Bill No. 347; Lake)</i> REQUIRING NOTICE OF PROPOSED AGENCY PRIVATE PROPERTY ASSESSMENTS TO THE PUBLIC AND INTERESTED PERSONS THROUGH E-MAIL AND POSTAL MAILING LISTS AND A WEBSITE; AND ALLOWING CIVIL ACTION TO VOID A PROPOSED AGENCY ACTION FOR FAILURE TO PROVIDE REQUIRED NOTICE	1174
287	<i>(Senate Bill No. 385; Caferro)</i> GENERALLY REVISING THE MONTANA PARENTS AS SCHOLARS PROGRAM; CLARIFYING THE FUNDING SOURCE FOR THE PROGRAM; CLARIFYING REPORTING REQUIREMENTS FOR THE PROGRAM; AMENDING SECTION 53-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1175
288	<i>(Senate Bill No. 412; Augare)</i> PROVIDING A TEMPORARY TAX EXEMPTION FOR PROPERTY OWNED BY A FEDERALLY RECOGNIZED MONTANA INDIAN TRIBE WHEN THE PROPERTY HAS A FEDERAL TRUST APPLICATION PENDING; PROVIDING THAT EXISTING TAX LIENS ARE NOT EXTINGUISHED; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING A DELAYED EFFECTIVE DATE	1177
289	<i>(Senate Bill No. 420; Gallus)</i> PROVIDING PENALTIES FOR DELINQUENT FILING OF REQUIRED AUDITS AND REPORTS BY A LOCAL GOVERNMENT ENTITY TO THE DEPARTMENT OF ADMINISTRATION; REQUIRING THE DEPARTMENT TO ADOPT RULES ESTABLISHING A FINE; ALLOWING THE DEPARTMENT TO WAIVE THE PENALTIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-7-503 AND 2-7-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE	1178
290	<i>(House Bill No. 265; Vance)</i> PROVIDING THAT AN INSURANCE COMPANY MAY NOT UNILATERALLY DISREGARD A REPAIR OPERATION OR COST IDENTIFIED BY AN ESTIMATING SYSTEM THAT THE INSURER AND AN AUTOMOBILE BODY REPAIR BUSINESS OR LOCATION HAVE AGREED TO UTILIZE IN DETERMINING THE COST OF REPAIR; AND AMENDING SECTION 33-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1180
291	<i>(House Bill No. 416; Klock)</i> PROVIDING FOR QUALITY ASSURANCE ACTIVITIES BY MEDICAL PRACTICE GROUPS; PROVIDING FOR CONFIDENTIALITY OF THE PROCEEDINGS OF QUALITY ASSURANCE COMMITTEES; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1182
292	<i>(House Bill No. 172; Washburn)</i> REVISING LAWS RELATED TO THE HUNTING OF GRIZZLY BEARS; AMENDING SECTIONS 87-1-304, 87-2-701, 87-5-301, AND 87-5-302, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1186
293	<i>(Senate Bill No. 1; Tutvedt)</i> REQUIRING RECALCULATION OF THE AMOUNT ASSESSABLE TO EACH LOT, TRACT, OR PARCEL IN A SPECIAL IMPROVEMENT DISTRICT OR RURAL SPECIAL IMPROVEMENT DISTRICT IF THE NUMBER OF LOTS, TRACTS, OR PARCELS INCREASES; REQUIRING NOTICE OF POSSIBLE RECALCULATIONS DURING THE CREATION OF THE DISTRICT; AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2151, 7-12-4104, 7-12-4106, 7-12-4161, AND 7-12-4162, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE	1188

294	<i>(Senate Bill No. 16; Brown)</i> REQUIRING A PERSON CONDUCTING SIMULCAST RACING THROUGH A SIMULCAST PARIMUTUEL NETWORK TO ENTER INTO A CONTRACT WITH THE BOARD OF HORSERACING; PROVIDING THAT A PERSON CONDUCTING SIMULCAST RACING WITHOUT A CONTRACT IS GUILTY OF A MISDEMEANOR; AUTHORIZING THE BOARD OF HORSERACING TO ACT AS A SIMULCAST PARIMUTUEL NETWORK PROVIDER WITH RESPECT TO SIMULCAST RACES; APPROPRIATING CERTAIN FUNDS TO THE BOARD OF HORSERACING; AMENDING SECTIONS 23-4-101, 23-4-105, 23-4-201, AND 23-4-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1193
295	<i>(Senate Bill No. 75; Sonju)</i> ALLOWING THE DEPARTMENT OF REVENUE TO ESTABLISH ALTERNATIVE OFFICE HOURS; AMENDING SECTION 2-16-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1197
296	<i>(Senate Bill No. 81; Wanzenried)</i> REVISING COMMERCIAL DRIVER LICENSING LAWS TO CONFORM TO CHANGES IN FEDERAL MOTOR VEHICLE SAFETY ADMINISTRATION REGULATIONS; CREATING RECORDKEEPING REQUIREMENTS FOR MEDICAL CERTIFICATE EXPIRATION DATES AND INFORMATION FOR CERTAIN COMMERCIAL DRIVERS; AUTHORIZING LICENSE DOWNGRADE IN CERTAIN CIRCUMSTANCES; REVISING CERTAIN LICENSE SUSPENSION PROVISIONS; AMENDING SECTIONS 61-1-101, 61-5-112, 61-5-221, 61-8-102, 61-8-801, 61-8-803, 61-8-812, 61-11-102, AND 61-11-105, MCA; AND PROVIDING EFFECTIVE DATES	1197
297	<i>(Senate Bill No. 87; Steinbeisser)</i> AUTHORIZING FORGIVENESS OF LOAN PRINCIPAL AND EXPENDITURE OF FUNDS TO MEET OTHER FEDERAL INCENTIVES, CONDITIONS, AND REQUIREMENTS IN THE WATER POLLUTION CONTROL AND DRINKING WATER STATE REVOLVING FUNDS; AMENDING SECTIONS 75-5-1107 AND 75-6-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1217
298	<i>(Senate Bill No. 99; Brenden)</i> AUTHORIZING PAYMENT OF A COMMISSION TO LICENSE AGENTS WHO SELL TICKETS FOR CERTAIN HUNTING LICENSE LOTTERIES; AMENDING SECTIONS 87-1-271 AND 87-2-903, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE	1220
299	<i>(Senate Bill No. 173; Tutvedt)</i> CLARIFYING THAT NOISES RESULTING FROM SHOOTING ACTIVITIES AT SHOOTING RANGES MAY NOT BE CONSIDERED TO BE PUBLIC NUISANCES; AND AMENDING SECTION 27-30-101, MCA	1222
300	<i>(Senate Bill No. 195; Ripley)</i> REVISING LAWS RELATING TO THE MONTANA SEED LABORATORY; CREATING A SEED LABORATORY ADVISORY BOARD; ALLOWING THE LABORATORY TO DETERMINE APPROPRIATE FEES FOR THE COSTS OF SEED ANALYSIS; AMENDING SECTIONS 20-25-229, 80-5-126, 80-5-128, AND 80-5-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1222
301	<i>(Senate Bill No. 234; Sonju)</i> REVISING THE CONDITIONS UNDER WHICH A MUNICIPALITY MAY PROVIDE GARBAGE AND SOLID WASTE SERVICES; AMENDING SECTIONS 7-2-4736 AND 7-13-4107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1225
302	<i>(Senate Bill No. 267; Vincent)</i> ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY COMPLETE CERTAIN TOTAL MAXIMUM DAILY LOADS BY 2012 FOR THREATENED OR IMPAIRED WATER BODIES; REQUIRING REPORTING OF TOTAL MAXIMUM DAILY LOAD PROGRESS TO THE	

	ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-703, MCA	1226
303	(<i>Senate Bill No. 296; Tutvedt</i>) INCREASING THE CIVIL PENALTY FOR VIOLATION OF THE MONTANA QUARANTINE AND PEST MANAGEMENT ACT; AMENDING SECTION 80-7-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1228
304	(<i>Senate Bill No. 311; Gallus</i>) CLARIFYING THE TERMS OF OFFICE AND YEARS SERVED FOR OFFICIALS ELECTED TO AND CANDIDATES SEEKING NOMINATION FOR OFFICES THAT ARE CONSTITUTIONALLY TERM-LIMITED; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTION 13-10-201, MCA.	1228
305	(<i>Senate Bill No. 340; Vincent</i>) CLARIFYING COUNTY ENFORCEMENT RELATED TO A PERSON, ENTITY, OR REPRESENTATIVE OF A PERSON OR ENTITY THAT HAS ENTERED INTO A FIRE HAZARD REDUCTION AGREEMENT; AMENDING SECTION 7-33-2205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.	1230
306	(<i>Senate Bill No. 376; Lake</i>) EXTENDING THE MATURITY DATE TIME LIMIT ON CERTAIN UNITED STATES TREASURY BILLS, NOTES, AND BONDS USED AS SECURITY FOR SCHOOL DISTRICT CONSTRUCTION BONDS; AMENDING SECTION 7-6-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	1231
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403 *(Senate Bill No. 207; Moore)* CLARIFYING THE REGULATION OF BISON; GRANTING RULEMAKING AUTHORITY TO ESTABLISH A PERMIT AND INSPECTION SYSTEM FOR THE TRANSPORTATION OF BISON; PROVIDING DEFINITIONS; AMENDING SECTIONS 81-1-101, 81-2-120, 81-2-121, 81-3-201, 81-4-603, 81-5-101, 85-1-104, AND 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1716

404 *(Senate Bill No. 229; Sonju)* AUTHORIZING CERTAIN SEPARATE LEGAL ENTITIES CREATED UNDER THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT TO CONTRACT WITH THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO PROVIDE RETIREMENT SYSTEM COVERAGE FOR EMPLOYEES OF A LEGAL ENTITY. 1722

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406 *(Senate Bill No. 266; Olson)* REVISING THE LOCAL ABATEMENT OF THE COAL GROSS PROCEEDS TAX ON COAL PRODUCED BY A NEW OR EXPANDING UNDERGROUND COAL MINE; PROVIDING THAT THE TAX ABATEMENT MAY BE 50% OR LESS FOR AN UNDERGROUND MINE TAXED AT 5% OF THE VALUE OF COAL; PROVIDING AN INITIAL COAL GROSS PROCEEDS TAX OF 2.5% ON COAL PRODUCED FROM A NEW OR EXISTING UNDERGROUND MINE FOR AN INITIAL 10-YEAR PERIOD; AMENDING SECTIONS

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414 (*Senate Bill No. 108; Barrett*) REQUIRING CONSULTATION AND COORDINATION WITH CERTAIN COUNTY AND TRIBAL GOVERNMENTS IN PROPOSED STATE AND FEDERAL POLICY DECISIONS REGARDING LARGE PREDATORS AND LARGE GAME SPECIES; AMENDING SECTION 87-1-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1778

415 (*Senate Bill No. 136; Balyeat*) REVISING RESIDENCY REQUIREMENTS FOR HUNTING LICENSES; AMENDING SECTIONS 87-1-290, 87-2-514, AND 87-2-515, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1779

416 (*Senate Bill No. 143; Barrett*) REVISING MONTANA GRIZZLY BEAR POLICY TO AVOID CONFLICTS WITH HUMANS AND LIVESTOCK; AMENDING SECTION 87-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1781

417 (*Senate Bill No. 277; Moore*) CLARIFYING THAT THE BEEF CHECK-OFF IS TO BE PAID ONLY ON CATTLE SOLD; LIMITING THE FEE CHARGEABLE BY THE DEPARTMENT OF LIVESTOCK FOR COLLECTING THE NATIONAL BEEF CHECK-OFF; REQUIRING THE LEGISLATIVE AUDITOR TO AUDIT THE DEPARTMENT OF LIVESTOCK'S DIRECT COSTS FOR COLLECTING THE BEEF CHECK-OFF; AMENDING SECTIONS 81-1-102, 81-8-901, AND 81-8-902, MCA; AND PROVIDING AN EFFECTIVE DATE 1781

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27	<i>(Steinbeisser)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF HAIL INSURANCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 30, 2011, TO THE SENATE. . .	1958
28	<i>(Buttrey)</i> URGING THE PRESIDENT OF THE UNITED STATES, THE DEPARTMENT OF DEFENSE, AND CONGRESS TO RECONSIDER THE PROPOSED RELOCATION OF THE F-15C/D MISSION OUT OF GREAT FALLS, MONTANA, CONDUCT AN IMPROVED ANALYSIS BASED ON ACTUAL DATA INSTEAD OF ASSUMPTIONS, AND RECONSIDER THE TOTAL CONTRIBUTIONS OF MONTANA AND BENEFITS TO THIS COUNTRY OF RETAINING THE F-15C/D MISSION IN MONTANA . .	1958
29	<i>(Priest)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, MARCH 17, 2011, AND MARCH 30, 2011, TO THE SENATE	1962
30	<i>(Murphy)</i> CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE HONORABLE DANIEL A. BOUCHER AS DISTRICT JUDGE OF THE TWELFTH JUDICIAL DISTRICT OF THE STATE OF MONTANA MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE	1964

31	<i>(Peterson)</i> ADOPTING THE CODE OF THE WEST AS THE MODEL CODE OF CONDUCT IN THE STATE OF MONTANA	1965
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LAWS

Enacted by the
**SIXTY-SECOND LEGISLATURE
IN REGULAR SESSION**

**Held at Helena, the Seat of Government
January 3, 2011, through April 28, 2011**

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

**COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION**

CHAPTER NO. 1

[HB 1]

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

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

Section 1. Appropriation. (1) The following amounts are appropriated from the state general fund for fiscal years 2011, 2012, and 2013 for the operation of the 62nd legislature and the costs of preparing for the 63rd legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	\$2,827,566
2. House of Representatives	4,609,477
3. Legislative Services Division	616,237

(2) The following amounts are appropriated from the state general fund for fiscal year 2013 for the initial costs of the 63rd legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	\$101,521
2. House	161,000
3. Legislative Services Division	7,663

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

Approved January 31, 2011

CHAPTER NO. 2

[HB 22]

AN ACT EXTENDING THE SUNSET ON WIRELESS 9-1-1 FUNDING FOR LESS-POPULATED COUNTIES; AMENDING SECTION 10-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 10-4-313, MCA, is amended to read:

“10-4-313. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, ~~2011~~ 2015:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive

less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, ~~2011~~ 2015, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction in accordance with 10-4-311(3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, ~~2011~~ 2015:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the counties with 1% or less than 1% of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (2)(a)(i) and (2)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, ~~2011~~ 2015, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved February 18, 2011

CHAPTER NO. 3

[HB 21]

AN ACT CORRECTING AN ADJUSTED TAX RATE UNDER THE EXTENDED PROPERTY TAX ASSISTANCE PROGRAM FOR TAX YEAR 2014; AND AMENDING SECTION 15-6-193, MCA.

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

Section 1. Section 15-6-193, MCA, is amended to read:

“15-6-193. Extended property tax assistance — phase in. (1) For the purpose of mitigating extraordinary market value increases during revaluation cycles that begin after December 31, 2008, the rate of taxation of qualified residences is adjusted in this section for properties with extraordinary increases in market value with owners that meet income requirements.

(2) An annual application on a form provided by the department is required to receive a tax rate adjustment under this section. The application must be signed under oath. A tax rate adjustment may be granted only for the current tax year and may not be granted for a previous year.

(3) A rate adjustment may not be granted for:

(a) any property that was sold or for which the ownership was changed after December 31 of the last year of the previous revaluation cycle unless the change in ownership is between husband and wife or parent and child with only nominal actual consideration or the change is pursuant to a divorce decree;

(b) the value of new construction, including remodeling, on the property occurring after December 31 of the last year of the previous revaluation cycle that is greater than 25% of the market value of the improvements; or

(c) a land use change occurring after December 31 of the last year of the previous revaluation cycle that increases the market value of the land by more than 25%.

(4) For the purposes of determining the adjustment in the class four property tax rate in this section, the following provisions apply for revaluation cycles beginning after December 31, 2008:

(a) The change in taxable value before reappraisal is the 2008 tax year value adjusted for any new construction or destruction that occurred in the 2008 tax year. The taxable value before reappraisal for the 2009 tax year and subsequent years is the same as the 2008 tax year value if no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes are made to the property during 2008 or subsequent tax years.

(b) The percentage increase in taxable value is measured as the percentage change in taxable value before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by multiplying the value before reappraisal in 2009 times 0.66 times 0.0301. The taxable value after reappraisal is calculated by multiplying the 2009 market value after reappraisal times 0.53 times 0.0247.

(c) The dollar increase in tax liability is measured as the change in tax liability before reappraisal to the tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the value before reappraisal in

2009 times 0.66 times 0.0301 times the tax year 2008 mill levy applied to the property. The tax liability after reappraisal is calculated by multiplying the 2009 market value after reappraisal times 0.53 times 0.0247 times the tax year 2008 mill levy applied to the property. The tax year 2008 mill levy is the total of all mills applied to the property for fiscal year 2009.

(d) Total household income is the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or both. For an entity, as defined in subsection (8), income also includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A household is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. For single-family rental dwellings, total household income does not include the income of the tenant.

(e) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.

(5) (a) If total household income is \$25,000 or less, the percentage increase in taxable value is greater than 24%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03269 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03546 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.03823 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04115 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.04374 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is 0.04648 times the value before reappraisal divided by the 2014 phase-in value.

(b) If total household income is greater than \$25,000 but less than or equal to \$50,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03301 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03612 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.03925 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04257 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.0456 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is 0.04873 times the value before reappraisal divided by the 2014 phase-in value.

(c) If total household income is greater than \$50,000 but less than or equal to \$75,000, the percentage increase in taxable value is greater than 36%, and the dollar increase in taxable liability is \$250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03332 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03678 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.04028 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04399 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.04739 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is ~~0.0598~~ 0.05098 times the value before reappraisal divided by the 2014 phase-in value.

(d) The adjusted tax rate computed under this subsection (5) must be rounded to the nearest 1/100 of 1%.

(6) A person who applies for a tax rate adjustment under this section shall provide the department with documentation of total household income and other information that the department considers necessary to determine the person's eligibility for the tax rate adjustment. Documents provided to the department to determine eligibility for a tax rate adjustment are subject to the confidentiality provisions in 15-30-2618.

(7) A person who applies for a tax rate adjustment and submits a false or fraudulent application for a tax rate adjustment is guilty of false swearing under 45-7-202.

(8) For the purposes of this section:

(a) "entity" means:

(i) a corporation, fiduciary, or pass-through entity, as those terms are defined in 15-30-2101; and

(ii) an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person; and

(b) "qualified residence" means any class four residential dwelling in Montana that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling actually occupied by itself or in combination with another class four residential dwelling in Montana for at least 7 months a year."

Approved February 23, 2011

CHAPTER NO. 4

[HB 60]

AN ACT ELIMINATING THE APPOINTMENT OF A SUPERVISOR OF MOTOR CARRIERS BY THE PUBLIC SERVICE COMMISSION; AND AMENDING SECTION 69-12-203, MCA.

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

Section 1. Section 69-12-203, MCA, is amended to read:

~~“69-12-203. Supervisor of motor carriers *Field inspectors*. (1) The commission shall appoint a supervisor of motor carriers who has general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor must be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. The supervisor shall serve at the pleasure of the commission and at an annual salary to be set by the commission.~~

~~(2) The supervisor shall direct all enforcement activities on behalf of the commission, including the investigation and prosecution of violations of this chapter or the rules or orders prescribed under this chapter by the commission.~~

~~(3) The supervisor and whatever *The commission may employ* field inspectors may be employed by the commission to assist the supervisor are considered to investigate and enforce the provisions of this chapter. *Field inspectors employed by the commission* are peace officers for the purpose of making arrests in connection with violations of this chapter and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of the vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12.”~~

Approved February 23, 2011

CHAPTER NO. 5

[HB 54]

AN ACT DEFINING “ORDER” AND “PROGRAM” WITH RESPECT TO ORDERS ISSUED BY THE DEPARTMENT OF LIVESTOCK THAT IT CONSIDERS NECESSARY OR PROPER TO PREVENT THE INTRODUCTION OR SPREADING OF INFECTIOUS, CONTAGIOUS, COMMUNICABLE, OR DANGEROUS DISEASES AFFECTING LIVESTOCK AND ALTERNATIVE LIVESTOCK IN THIS STATE; AMENDING SECTION 81-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 81-2-102, MCA, is amended to read:

“81-2-102. Powers of department. (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of

prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect fees that the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees, the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees must be deposited in the state special revenue fund for the use of the animal health functions of the department.

(d) subject to subsection (2), adopt rules and orders that it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock in this state ~~and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock and alternative livestock intended for importation into this state before it may be imported into this state;~~

(e) (i) adopt rules and orders that it considers necessary or proper for the inspection, testing, and quarantine of all livestock and alternative livestock imported into this state; *and*

(ii) *adopt rules and orders that it considers necessary or proper governing inspections and tests of livestock and alternative livestock intended for importation into this state to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock;*

(f) adopt rules and orders that it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of 81-9-201, 81-20-101, 81-21-102, 81-21-103, part 1, 2, or 3 of this chapter, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders that seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable, the standards approved by the United States department of agriculture must be adopted.

(h) install an adequate system of meat inspection in accordance with 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 that must provide ways and means for shipping home-grown and home-killed meats into any city

in this state. As far as practicable, the rules must conform with the meat-inspection requirements of the United States department of agriculture.

(i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under 81-20-101, 81-21-102, 81-21-103, or part 1, 2, or 3 of this chapter;

(k) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) (a) *As used in subsection (1)(d), "order" means a command, direction, or instruction issued by the department, board, or board's administrator in circumstances that clearly constitute an existing imminent peril to the public health, safety, or welfare or to animal health or welfare.*

(b) *An order under subsection (1)(d) may last no more than 5 years and may be altered or rescinded as necessary to address the circumstances set out in subsection (1)(d). An order may not be used to create a permanent program.*

(c) *As used in subsection (2)(b), "program" means a legislatively or administratively created function, project, or duty of an agency.*

(2)(3) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses."

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

Approved March 11, 2011

CHAPTER NO. 6

[HB 89]

AN ACT TO ELIMINATE LOCAL REGISTRATION AND DISCLOSURE FILING FOR STATE DISTRICT AND STATEWIDE CANDIDATES; AND AMENDING SECTIONS 13-37-225 AND 13-37-226, MCA.

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

Section 1. Section 13-37-225, MCA, is amended to read:

"13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. ~~All~~ *Except as provided in subsection (3), all* reports required by this chapter must be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of

all reports must be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law.

(3) Reports required by this chapter for candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or for a district court judge, and candidates for a state office filled by a statewide vote must be filed with the commissioner and do not have to be filed with the election administrator of a county.

Section 2. Section 13-37-226, MCA, is amended to read:

“13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports electronically as follows:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March, April, July, August, and September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of \$200 or more if received between the 10th day before the election and the day of the election;

(e) not more than 20 days after the date of the election; and

(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September in each year that an election is to be held;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held;

(b) within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by electronic communication to the commissioner ~~and the election administrator of the appropriate county~~ pursuant to 13-37-225.

(c) not more than 20 days after the date of the election; and

(d) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report within 24 hours of making an expenditure or incurring a debt or obligation of \$500 or more for election material described in 13-35-225(1) if made between the 17th day before the election and the day of the election;

(c) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(d) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section.”

Approved March 11, 2011

CHAPTER NO. 7

[HB 19]

AN ACT CLARIFYING THAT SMOKING FOR THE PURPOSES OF THE MONTANA CLEAN INDOOR AIR ACT INCLUDES THE SMOKING OF MARIJUANA FOR MEDICAL USE; AMENDING SECTION 50-40-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-40-103, MCA, is amended to read:

“50-40-103. Definitions. As used in this part, the following definitions apply:

(1) “Bar” means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by

guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.

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

(3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:

(a) restaurants;

(b) stores;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

(e) health care facilities;

(f) auditoriums, arenas, and assembly facilities;

(g) meeting rooms open to the public;

(h) bars;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(7) "Place of work" means an enclosed room where one or more individuals work.

(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product, *including marijuana intended for medical use as provided for in Title 50, chapter 46.*

Section 2. Coordination instruction. (1) If House Bill No. 161 is passed and approved, then [this act] is void.

(2) If House Bill No. 175 is passed by the electorate in 2012, then [this act] is void on [the effective date of House Bill No. 175].

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

Approved March 16, 2011

CHAPTER NO. 8

[HB 38]

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

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

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

“17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~May 5, 2009~~ *[the effective date of this act].*”

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

Approved March 16, 2011

CHAPTER NO. 9

[HB 44]

AN ACT REPEALING THE MONTANA CAPITAL COMPANY ACT; AMENDING SECTIONS 17-6-302, 17-6-311, 17-6-312, 17-6-313, 30-10-105, AND 32-1-422, MCA; AND REPEALING SECTIONS 90-8-101, 90-8-102, 90-8-103, 90-8-104, 90-8-105, 90-8-106, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA.

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

Section 1. Section 17-6-302, MCA, is amended to read:

“17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Board” means the board of investments created in 2-15-1808.

~~(2) “Capital company” means a Montana capital company created pursuant to Title 90, chapter 8.~~

~~(3)~~(2) “Clean and healthful environment” means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

~~(4)~~(3) “Department” means the department of commerce provided for in 2-15-1801.

~~(5)~~(4) “Employee-owned enterprise” means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

~~(6)~~(5) “Financial institution” includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

~~(7)~~(6) “Intermediary loan” means a loan provided to a local economic development organization with a revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.

~~(8)~~(7) “Loan participation” means loans or portions of loans bought from a financial institution and does not include the purchase of debentures issued by a capital company.

~~(9)~~(8) “Local economic development organization” means:

(a) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(ii) an entity certified by the department under 90-1-116; or

(iii) an entity established by a local government; and

(b) an entity actively engaged in economic development and business assistance work in the area.

~~(10)~~(9) “Locally owned enterprise” means any enterprise 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana.

~~(11)~~(10) “Long-term benefit to the Montana economy” means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly.

~~(12)~~(11) “Montana economy” means any business activities in the state of Montana, including those that continue existing jobs or create new jobs in Montana.

~~(13)~~(12) “Service fees” means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund.”

Section 2. Section 17-6-311, MCA, is amended to read:

“17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

(a) apply to a loan made pursuant to 17-6-317;

(b) limit the board’s authority to make loans to the capital reserve account as provided in 17-6-308(2);

~~(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.~~

(2) The total amount of loans made pursuant to 17-6-309(2) may not exceed \$80 million, the total amount of loans made pursuant to 17-6-317 may not exceed \$70 million, and a single loan may not be less than \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary.”

Section 3. Section 17-6-312, MCA, is amended to read:

“17-6-312. State participation in loans. (1) Subject to 17-6-311, state participation in any loan to a business enterprise, except for a loan made pursuant to 17-6-317 or guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

~~(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).~~

(3)(2) State participation in loans to nonprofit corporations may qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating the jobs.”

Section 4. Section 17-6-313, MCA, is amended to read:

“17-6-313. Prior commitment of funds. The board may authorize the commitment of funds to financial institutions ~~and capital companies~~ pursuant to rules adopted by the board, but the determination as to credit with respect to individual investments must be made by the financial institution and the board ~~or the capital company and the board.~~”

Section 5. Section 30-10-105, MCA, is amended to read:

“30-10-105. Exempt transactions — rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has not been a default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has not been a default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1

through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons, (other than those designated in subsection (7)), during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) a transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) a transaction pursuant to an offer made in this state by an offeror that is used in conjunction with the exemption found in subsection (8)(a) and the offeror has applied to the commissioner to use the exemption found in subsection (8)(b) in conjunction with or in addition to the exemption in subsection (8)(a), which the commissioner may allow if:

(i) the offeror has its corporate headquarters or principal place of business in this state;

(ii) the seller reasonably believes that all the buyers are purchasing for investment;

(iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iv) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in addition to the offers made pursuant to subsection (8)(a) and pays a filing fee that must accompany the application for approval. The commissioner may deny the application.

(d) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration, (other than a standby commission), is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

(14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any transactional exemptions adopted by rule.

~~(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company, as defined in 90-8-104, if the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.~~

~~(17)~~(16) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

~~(18)~~(17) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

~~(19)~~(18) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection ~~(19)(b)~~ (18)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection ~~(19)(b)~~ (18)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

~~(20)~~(19) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21)(20) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

(22)(21) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (22) (21) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for the purposes of this subsection (22) (21).”

Section 6. Section 32-1-422, MCA, is amended to read:

“32-1-422. Restriction on investment in corporate stock — rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock’s sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; *and*

~~(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act; and~~

~~(d)~~(c) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar

needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113, that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 7. Repealer. The following sections of the Montana Code Annotated are repealed:

- 90-8-101. Short title.
- 90-8-102. Declaration of policy.
- 90-8-103. Purpose.
- 90-8-104. Definitions.
- 90-8-105. Rulemaking.
- 90-8-106. Fees.
- 90-8-201. Certification of Montana capital companies and small business investment capital companies.
- 90-8-202. Designation of qualified Montana capital companies — designation of qualified Montana small business investment capital company — tax credit.
- 90-8-203. No recapture — unqualified investments — penalty.
- 90-8-204. Application requirements.
- 90-8-205. State liability disclaimed.
- 90-8-301. Qualified investments — penalty — extension permissible.
- 90-8-302. Restriction on investment.
- 90-8-303. Conflict of interest.
- 90-8-304. Application of securities law.
- 90-8-305. Sale of debentures.
- 90-8-311. Legislative review and oversight.
- 90-8-312. Investment reporting and recordkeeping.
- 90-8-313. Examination.
- 90-8-321. Decertification.

Section 8. 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 March 16, 2011

CHAPTER NO. 10

[HB 57]

AN ACT ALLOWING INFORMAL SERVICE OF PROCESS IN BOARD OF PERSONNEL APPEALS PROCEEDINGS; AND AMENDING SECTION 39-31-107, MCA.

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

Section 1. Section 39-31-107, MCA, is amended to read:

“39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter ~~shall may~~ be served ~~as provided by the rules of civil procedure~~ by depositing it in the U.S. mail, postage prepaid.”

Approved March 16, 2011

CHAPTER NO. 11

[HB 74]

AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LOCATE, CONTACT, AND SHARE INFORMATION WITH EXTENDED FAMILY MEMBERS UPON PLACEMENT OF CHILDREN IN OUT-OF-HOME CARE; AMENDING SECTIONS 41-3-301 AND 41-3-427, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 41-3-301, MCA, is amended to read:

“41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical custody of the youth of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) *The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.*

~~(5)~~(6) If a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

~~(6)~~(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

~~(7)~~(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

~~(8)~~(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 2. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services — 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 the facts establishing probable

cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(d) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with a social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. 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, 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 for 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) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) 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) The petition must be served as provided in 41-3-422.”

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

Approved March 16, 2011

CHAPTER NO. 12

[HB 84]

AN ACT GENERALLY REVISING LABOR LAW; PROVIDING THAT THE DEFINITION OF “EMPLOYEE” DOES NOT INCLUDE AN INDEPENDENT CONTRACTOR WITH RESPECT TO GENERAL OBLIGATIONS OF EMPLOYERS; PROVIDING THAT THE DEPOSIT OF CERTAIN WAGES INTO THE WAGE COLLECTION FUND BY THE COMMISSIONER OF LABOR IS DISCRETIONARY RATHER THAN MANDATORY; UPDATING THE REFERENCE TO FEDERAL LAW WITH RESPECT TO THE DEFINITION OF A PERSON IN AN OUTSIDE SALES CAPACITY; AND AMENDING SECTIONS 39-3-201, 39-3-213, AND 39-3-406, MCA.

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

Section 1. Section 39-3-201, MCA, is amended to read:

“39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) “Commissioner of labor” refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by the director, commissioner, or chief for the purpose of this part.

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

(3) “Employ” means to permit or suffer to work.

(4) “Employee” includes any person who works for another for hire, *except that the term does not include a person who is an independent contractor.*

(5) “Employer” includes any individual, partnership, association, corporation, business trust, legal representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States.

(6) (a) “Wages” includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection (6), “service charge” means an arbitrary fixed charge added to the customer’s bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement.”

Section 2. Section 39-3-213, MCA, is amended to read:

“39-3-213. Disposition of wages. (1) The commissioner of labor shall *may* deposit wages collected under parts 2 and 4 of this chapter into the wage collection fund and *with respect to wages deposited into the fund* shall attempt to make payment of wages to the entitled person. Wages deposited into the wage collection fund do not bear interest. The wage collection fund is an agency fund as provided in 17-2-102(3)(d). The payment of wages collected may be made by means of state warrants.

(2) A warrant issued pursuant to subsection (1) that remains unclaimed for more than 6 months from the date of issuance must be returned to the state treasurer to be stale-dated in accordance with 17-8-303.”

Section 3. Section 39-3-406, MCA, is amended to read:

“39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, ~~as defined in 29 CFR 541.5 pursuant to 29 CFR 541.500;~~

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, 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."

Approved March 16, 2011

CHAPTER NO. 13

[HB 101]

AN ACT GENERALLY REVISING LAWS RELATING TO WATER AND SEWER DISTRICTS AND REGIONAL WATER AUTHORITIES; REQUIRING THE BOARD OF DIRECTORS TO CAUSE AN AUDIT TO BE MADE; ELIMINATING THE POSITION OF AUDITOR; ALLOWING THE OPERATOR OF A DISTRICT TO BE ASSIGNED THE DUTIES OF THE GENERAL MANAGER; CLARIFYING THE JOINT EXERCISE OF POWERS BY REGIONAL WATER AUTHORITIES; AMENDING SECTIONS 7-13-2221, 7-13-2277, 7-13-2278, 7-13-2279, AND 75-6-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 7-13-2221, MCA, is amended to read:

"7-13-2221. Powers related to district finances — audits. (1) Any district incorporated as provided in this part may:

(1)(a) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects;

(2)(b) cooperate and contract with the state or federal government or any department or agency of the state or federal government in furnishing assurances for and meeting local cooperation requirements of any project involving control, conservation, and use of water;

(3)(c) borrow money and incur indebtedness and issue bonds or other evidence of indebtedness and refund or retire any indebtedness or lien that may exist against the district or property of the district;

(4)(d) cause taxes to be levied in the manner provided for in part 23 and this part for the purpose of paying any obligation of the district and to accomplish the purposes of part 23 and this part in the manner provided in part 23 and this part;

(5)(e) levy special assessments against property located in the district and benefited by any of its improvements, as provided in 7-13-2280 through 7-13-2289, and pledge the collections of the special assessments in whole or in

part, with any other revenue of the district, to the payment of bonds issued pursuant to part 23; and

(6)(f) enter into covenants and agreements as to the establishment and maintenance of reasonable rates and charges for the use of its systems or improvements or any part of the systems or improvements as required, in the judgment of the board of directors, for the favorable sale of bonds issued pursuant to part 23, including, without limitation, a covenant to establish and maintain rates and charges sufficient, with the collection of any special assessments, to pay debt service and operating, maintenance, and replacement costs of the system or improvement and fund necessary reserves or a covenant to establish and maintain rates and charges sufficient, with the collection of any special assessments, to pay operating and maintenance costs of the system or improvement, fund necessary reserves for the system or improvement, and pay debt service on bonds and to provide additional funds necessary for the purposes of the system or improvement or to provide assurance to the holders of bonds as to the sufficiency of the revenue.

(2) *The board of directors shall cause an audit of the financial records of the district to be made in compliance with the requirements of Title 2, chapter 7, part 5, at the expense of the district.*

Section 2. Section 7-13-2277, MCA, is amended to read:

“7-13-2277. Appointment of administrative personnel. (1) The board of directors shall, at its first meeting or as soon thereafter as practicable, appoint by a majority vote a general manager; ~~and a secretary; and an auditor.~~ ~~No A~~ director shall ~~may not~~ be eligible to the office of the general manager; ~~or the secretary; or auditor.~~ *The board of directors may assign the district’s operator, as defined in 37-42-102, the additional duties of a general manager.*

(2) ~~The general manager; and secretary; and auditor shall~~ *must* receive such the compensation as ~~that the board shall determine~~ *determines*, and each shall serve at the pleasure of the board.”

Section 3. Section 7-13-2278, MCA, is amended to read:

“7-13-2278. Duties of administrative personnel. (1) The general manager has full charge and control of the maintenance, operation, and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. *The general manager shall ensure that the district establishes and maintains a system of auditing and accounting that shows the financial condition of the district, draw or cause the secretary to draw warrants to pay demands made against the district that have been first approved by at least three members of the board and the general manager, and perform other duties that may be imposed by the board. The general manager shall report to the board in accordance with rules that it may adopt.*

(2) The secretary shall countersign all contracts on behalf of the district and perform other duties that may be imposed by the board.

(3) ~~The auditor is charged with the duty of installing and maintaining a system of auditing and accounting that must completely and at all times show the financial condition of the district. The auditor shall draw warrants to pay demands made against the district when the demands have been first approved by at least three members of the board and by the general manager.~~

Section 4. Section 7-13-2279, MCA, is amended to read:

“7-13-2279. Performance bonds for administrative personnel. The general manager, secretary, ~~and auditor~~ and all other employees or assistants of ~~said~~ *the* district who may be required to do so by the board of directors shall give bonds to the district, conditioned for the faithful performance of their duties, as the board from time to time may provide.”

Section 5. Section 75-6-305, MCA, is amended to read:

“75-6-305. Joint exercise of powers by certain public agencies — agreements among agencies — filing of agreement — prohibition against competition — retirement of bonds — consent of public agency.

(1) Any powers, privileges, or authority of a public agency of this state relating to public water supplies or the transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or with any agency of the United States to the extent that the laws of the United States permit. An agency of the state government when acting jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this part upon a public agency.

(2) A public agency may enter into agreements with one or more other public agencies for the purpose of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies is necessary before any agreement may take effect.

(3) An agreement must specify the following:

- (a) its duration;
- (b) the precise organization, composition, and nature of the authority created, together with the powers delegated to the authority;
- (c) its purpose or purposes;
- (d) the manner of financing for the authority and of establishing and maintaining a budget for the authority;
- (e) the permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;
- (f) the manner of acquiring, holding, and disposing of real and personal property of the authority; and
- (g) any other necessary and proper matters.

(4) An agreement may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with the new public agency must be made. When only two public agencies form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.

(5) Prior to taking effect, an agreement made under this part must be filed with the clerk of the county commission of each county in which a member of the authority is located and the agreement then must also be filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county or counties where filed, stating that the agreement has been filed in that county.

(6) A public agency that enters into an agreement made under this part may not offer or provide water or wastewater services in competition with another public agency entering into the agreement.

(7) A public agency that enters into an agreement made under this part may not withdraw from the agreement until the outstanding bonded indebtedness of the authority is retired or the bondholders are otherwise protected.

(8) (a) *An authority may not provide water or wastewater services to end users located within the jurisdiction of a public agency that owns or operates a community water system or a public sewage system, as those terms are defined in 75-6-102, without the consent of the governing body of the public agency through the adoption of a resolution or ordinance.*

(b) *The governing body may not adopt a resolution or ordinance without first holding a public hearing. The hearing must address relevant factors relating to the provision of the water or wastewater services, including but not limited to the scope of the proposed service, rates and charges, the indebtedness of the public agency and the authority, and the rights and obligations of the persons or entities to be served. Notice must be given as provided in 7-1-2121 or 7-1-4127.*

(c) *For purposes of this subsection (8), "governing body" means the council, commission, board of directors, or other legislative body charged with governing the public agency."*

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective July 1, 2011.

Approved March 16, 2011

CHAPTER NO. 14

[HB 204]

AN ACT ALLOWING ANY SCHOOL BOARD TRUSTEE OF CERTAIN DISTRICTS TO PRESIDE OVER THE BOARD; RESTRICTING AN ADDITIONAL TRUSTEE FROM VOTING ON ISSUES RELATED ONLY TO AN ELEMENTARY SCHOOL DISTRICT; AND AMENDING SECTIONS 20-3-321, 20-3-332, 20-3-351, AND 20-3-352, MCA.

WHEREAS, if the boundaries of an elementary school district and a high school district do not coincide, then high school additional trustees may be elected from areas outside of the elementary school district boundaries to serve on the high school board of trustees along with their elementary school trustee counterparts who also serve as trustees for the high school district; and

WHEREAS, the boards of trustees of school districts may combine their governance into a single school board and merge the administration of their school districts for purposes of economy and efficiency; and

WHEREAS, a combined school board may wish to elect a high school additional trustee as its presiding officer because of that person's valuable knowledge and experience; and

WHEREAS, current state law may not allow high school additional trustees to serve as the presiding officers of combined school boards because they are not members of the elementary district school board; and

WHEREAS, an elementary school district's integrity of governance on a combined school board can be protected by restricting a presiding officer who is a high school additional trustee from voting on matters that pertain only to the elementary school district.

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

Section 1. Section 20-3-321, MCA, is amended to read:

“20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees, but not later than the third Saturday of May. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.

(3) *The presiding officer of a board of trustees of an elementary district may be any trustee of the board, including an additional trustee as provided for in 20-3-352(2). If an additional trustee is chosen to serve as the presiding officer of the board of trustees of an elementary district described in 20-3-351(1)(a), the additional trustee may not vote on issues pertaining only to the elementary district.”*

Section 2. Section 20-3-332, MCA, is amended to read:

“20-3-332. Personal immunity of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office.

(3) *An additional trustee, as provided for in 20-3-352(2), who is chosen as a nonvoting presiding officer of the board of trustees of an elementary district is entitled to all of the immunization, defenses, and indemnifications described in subsection (1) of this section.”*

Section 3. Section 20-3-351, MCA, is amended to read:

“20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which the operating high school buildings are located, the trustees of the elementary district in which the operating high school building that was first constructed is located; and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.

(3) *An additional trustee may be elected as the presiding officer of a high school district but may not vote on issues pertaining only to the elementary district. The additional trustee, as the presiding officer of the board, has all other powers, protections, and obligations of a presiding officer of an elementary district, including those under 2-3-203.*

Section 4. Section 20-3-352, MCA, is amended to read:

“20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee. (1) As provided in 20-3-351(1)(b), a high school district, except a county high school district, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the trustees of the elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(e) *An additional trustee may serve as the presiding officer of the board of trustees of an elementary district in accordance with 20-3-321(3).*

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school

district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing one of the following alternative methods of electing the members of the high school district board of trustees:

(i) one trustee must be elected from each elementary school district with territory included in the high school district and two or three trustees must be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees; or

(ii) the county superintendent shall establish four trustee nominating districts within the high school district but outside the territory of the elementary school district in which the high school buildings are located. One trustee must be elected from each trustee nominating district and three trustees must be elected from the elementary district in which the high school buildings are located, for a total of seven trustees on the high school district board of trustees. Trustees elected from the elementary district in which the high school buildings are located shall serve on both the high school district board of trustees and on the elementary school district board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school district board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-, 2-, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period.”

Approved March 16, 2011

CHAPTER NO. 15

[HB 208]

AN ACT REQUIRING LOCAL EDUCATIONAL AGENCIES TO PROVIDE CERTAIN STUDENT RECORD INFORMATION TO THE MONTANA YOUTH CHALLENGE PROGRAM ON A SEMIANNUAL BASIS; PROVIDING WRITTEN NOTICE TO A PARENT OR GUARDIAN OF THE INTENDED DISCLOSURE OF THE STUDENT RECORD INFORMATION; PROVIDING FOR AN OPPORTUNITY TO OBJECT TO THE DISCLOSURE; AMENDING SECTION 20-1-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-1-213, MCA, is amended to read:

“20-1-213. Transfer of school records. (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as

amended, and its implementing regulations at 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request.

(2) If records cannot be forwarded within 5 days, the local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred.

(3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees.

(4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related.

(5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student.

(6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility.

(8) (a) *By November 1 and March 1 of each school fiscal year, a local educational agency shall prepare a report to be provided to the director of the Montana youth challenge program subject to subsections (8)(b) and (8)(c) containing the name, last-known address, and dates of attendance of a student who:*

(i) is at least 16 years of age but less than 19 years of age;

(ii) was enrolled but is no longer enrolled in a school in the district;

(iii) has not provided school transfer or graduation information to a school in the district; and

(iv) has not received a high school diploma or general educational development certificate.

(b) After preparing the report in accordance with subsection (8)(a), a local educational agency shall provide written notice to the parent or guardian of the student or to the student if the student is at least 18 years of age or is under 18

years of age and emancipated that the agency intends to provide the report to the director of the Montana youth challenge program. The parent or guardian or the student must be given the opportunity to object to the planned disclosure of the information. If the parent or guardian or the student fails to respond to the notice within 30 days, the local educational agency shall forward the report to the director of the Montana youth challenge program.

(c) The report provided by the local educational agency may not include a student who:

(i) is receiving medical care or treatment that prohibits school attendance;

(ii) is enrolled in a foreign exchange program;

(iii) is enrolled in an early admissions college program;

(iv) is participating in a job corps program, an adult basic education program, or an accredited apprenticeship program; or

(v) is excused from school for a reason determined acceptable by the local educational agency.

(d) The official to whom the information in subsection (8)(a) is provided shall certify in writing to the local educational agency that is providing the information that the information will not be disclosed to any other party except as necessary to recruit and retain students.

(8)(9) As used in this section, "local educational agency" means a public school district or a state-funded school."

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

Approved March 16, 2011

CHAPTER NO. 16

[HB 294]

AN ACT ESTABLISHING THE CONFIDENTIALITY OF CERTAIN INFORMATION REGARDING THE TESTING OF LIVESTOCK; PROVIDING EXCEPTIONS TO THE CONFIDENTIALITY OF THE ANIMAL TESTING INFORMATION; AND PROVIDING RULEMAKING AUTHORITY.

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

Section 1. Confidentiality of information collected — exceptions. (1)

Except as provided in subsections (2) through (4), all information regarding the testing of any livestock that is owned by or in the possession or custody of a livestock producer, livestock dealer as defined in 81-8-213, or livestock market as defined in 81-8-213 that is collected by the department:

(a) must be held confidential by the department and its employees;

(b) is not a public writing as described in 2-6-101 and is exempt from the public disclosure provisions of Title 2, chapter 6; and

(c) is not subject to discovery or introduction into evidence in any civil action.

(2) For the purposes of this section, "livestock" has the meaning provided in 81-2-702.

(3) The administrator, appointed pursuant to 81-1-301, may disclose information collected by the department from individual livestock producers, livestock dealers, or livestock markets for the purposes of the department's animal health programs whenever in the administrator's judgment the disclosure will assist in the implementation of the animal health programs. The administrator may disclose the information to another governmental entity

pursuant to the conditions described in subsection (4) or if the governmental entity confirms in writing that the entity will maintain the confidentiality of the information.

(4) Animal disease diagnostic tests that identify the owner of the animal tested may not be disclosed unless:

(a) the administrator determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health;

(b) the owner gives written permission to disclose the information;

(c) the information is disclosed in actions or administrative proceedings commenced under the provisions of Title 81, chapter 2, 4, 5, 6, 8, 9, or 30;

(d) disclosure is required by subpoena or court order; or

(e) the information is disclosed to a law enforcement agency in connection with the investigation or prosecution of criminal offenses.

(5) Upon release by the administrator or the board of any information to any other governmental entity or to any person, the administrator shall:

(a) notify the person to whom the information refers or pertains that the release has been made and the name of the governmental entity or person to whom the information was released; and

(b) provide to the person to whom the information refers a copy or summary of the information contained in the release.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 81, chapter 2, part 1, and the provisions of Title 81, chapter 2, part 1, apply to [section 1].

Approved March 16, 2011

CHAPTER NO. 17

[SB 21]

AN ACT AUTHORIZING A DISTRICT COURT TO DISMISS A CIVIL ACTION FOR LACK OF PROSECUTION AFTER A PERIOD OF TIME; AMENDING SECTION 25-9-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Failure to prosecute — dismissal on initiative of court. In a district court action in which it appears on the face of the record that activity by filing of pleadings, order of court, or otherwise has not occurred for a period of 2 years and no stay has been issued or approved by the court, the court or, if the court does not act, the clerk of court shall serve notice of lack of prosecution to each party at the party's last-known address. If a pleading, order, or other activity does not occur within the 60-day period following the service of the notice and if a stay is not issued or approved during the 60-day period, the court shall, on its own motion and without further notice or hearing, dismiss the action without prejudice.

Section 2. Section 25-9-101, MCA, is amended to read:

“25-9-101. Judgment to be on the merits. In every case, judgment must be rendered on the merits, except as provided in [section 1] and Rule 41, M.R.Civ.P.”

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2011.

Section 5. Applicability. [This act] applies to actions filed in district court on or after [the effective date of this act].

Approved March 16, 2011

CHAPTER NO. 18

[SB 27]

AN ACT ADDING A LICENSED ACUPUNCTURIST TO THE MONTANA STATE BOARD OF MEDICAL EXAMINERS; AMENDING SECTION 2-15-1731, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-15-1731, MCA, is amended to read:

“2-15-1731. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of ~~12~~ 13 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine, including one member with experience in emergency medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist;

(e) one member who is a licensed physician assistant;

(f) *one member who is a licensed acupuncturist;*

~~(g)~~ (g) one member who is a volunteer emergency medical technician, as defined in 50-6-202; and

~~(g)~~ (h) two members of the general public who are not medical practitioners.

(4) (a) The members having the degree of doctor of medicine may not be from the same county.

(b) The volunteer emergency medical technician must have a demonstrated interest in and knowledge of state and national issues involving emergency medical service.

(c) Each member must be a citizen of the United States.

(d) Each member, except for public members, must have been licensed and must have practiced medicine, *acupuncture*, emergency medical care, or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.

(5) Members shall serve staggered 4-year terms. A term begins on September 1 of each year of appointment. A member may be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

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

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved March 16, 2011

CHAPTER NO. 19

[SB 31]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 62ND LEGISLATURE; AMENDING SECTIONS 7-3-4324, 7-6-2541, 10-3-1308, 10-4-311, 10-4-313, 15-30-2339, 15-35-108, 15-36-304, 15-66-102, 15-70-324, 16-2-203, 16-11-119, 17-1-511, 20-7-1201, 20-9-235, 25-9-608, 30-10-103, 30-10-104, 30-13-338, 32-2-406, 32-9-103, 33-2-1323, 35-16-303, 37-15-103, 46-6-412, 50-4-504, 50-15-114, 50-40-104, 50-40-201, 53-6-1001, 61-11-203, 69-3-111, 69-3-2004, 69-5-104, 70-27-111, 72-3-916, 75-1-207, 75-15-103, 75-20-104, 76-2-303, 82-11-111, 85-2-436, 87-2-101, 87-3-236, 87-5-714, AND 90-3-1301, MCA; AMENDING SECTION 8, CHAPTER 330, LAWS OF 2009; AND REPEALING SECTION 5-11-221, MCA.

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

Section 1. Section 7-3-4324, MCA, is amended to read:

“7-3-4324. Procedure to enact ordinance or resolution. (1) Each proposed ordinance or resolution ~~shall~~ *must* be introduced in written or printed form and ~~shall~~ *may* not contain more than one subject, which ~~shall~~ *must* be clearly stated in the title; ~~but~~ *however*, general appropriation ordinances may contain the various subjects and accounts for which money is to be appropriated. ~~Every~~ *Each* ordinance or resolution passed by the commission ~~shall~~ *must* be signed by the mayor or two members *of the commission* and filed with the clerk within 2 days and ~~by him~~ *must be* recorded by the clerk.

(2) The enacting clause of all ordinances passed by the commission ~~shall~~ *must* be “Be it ordained by the commission of the (city or town) of (name of city or town)”. The enacting clause of all ordinances submitted by the initiative ~~shall~~ *must* be “Be it ordained by the people of the (city or town) of (name of city or town)”.

(3) ~~No~~ *An* ordinance, unless it ~~be~~ *is* declared an emergency, ~~shall~~ *may not* be passed on the day on which it ~~shall~~ *have been* introduced unless ~~so~~ ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns.

(4) ~~No~~ *An* ordinance or resolution or section ~~thereof~~ *shall* *of an ordinance or resolution* ~~may not~~ be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution or section *being* revised or amended.

(5) ~~Every~~ *Each* ordinance or resolution, upon its final passage, ~~shall~~ *must* be recorded in a book kept for that purpose and ~~shall~~ *must* be authenticated by the signature of the presiding officer and the clerk of the commission. At ~~least~~ *a minimum*, the number and title of ~~every~~ *each* ordinance or resolution ~~shall~~ *must* be published at least once within 10 days after its final passage in ~~such~~ *the* manner ~~as is~~ provided *for* in this part.”

Section 2. Section 7-6-2541, MCA, is amended to read:

“7-6-2541. County detention center inmate medical costs. The board of county commissioners shall budget and expend funds for inmate medical care, including but not limited to costs of providing direct medical care, medication, medical services, hospitalization, insurance premiums, self-insured coverage, or contracted services for expenses that must be borne by the county for inmates confined in a county detention center as provided for in ~~7-32-2222~~ 7-32-2224.”

Section 3. Section 10-3-1308, MCA, is amended to read:

“10-3-1308. Responsibilities of highway patrol — monitoring of motor carriers — billing. (1) After receiving notification from the disaster and emergency services division that a motor carrier will be transporting high-level radioactive waste or transuranic waste through the state, the highway patrol shall establish a plan for monitoring the shipment.

(2) Monitoring a shipment by motor carrier may include escorting the vehicle through the state, establishing checkpoints, shadowing the vehicle, electronically following the vehicle’s movements, or any other method determined by the highway patrol to be effective and safe.

(3) The highway patrol shall coordinate inspection of the motor carrier with the department of transportation’s motor carrier services division.

(4) The highway patrol shall determine the cost that it has incurred in monitoring each motor carrier and shall submit a bill for reimbursement to the disaster and emergency services division for payment out of the account established in 10-3-1304(1) ~~according to the priorities established in 10-3-1304(3).~~

(5) The routing of the transport by motor carrier of high-level radioactive waste and transuranic waste must be determined by the department of transportation and the appropriate regulating federal authority.”

Section 4. Section 10-4-311, MCA, is amended to read:

“10-4-311. Distribution of enhanced 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire enhanced 9-1-1 account for costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(a) collection of the fee imposed by 10-4-201(1)(b); and

(b) modification of central office switching and trunking equipment necessary to provide service for an enhanced 9-1-1 system only.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs described in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid,:

~~(a) for each fiscal year through the fiscal year ending June 30, 2007:~~

~~(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties’ share of the account.~~

~~(ii) the remaining 16% of the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; and~~

~~(b) for fiscal years beginning after June 30, 2007, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However,~~

each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(4) An enhanced 9-1-1 jurisdiction whose enhanced 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by an enhanced 9-1-1 jurisdiction with an approved final plan for enhanced 9-1-1 service the proportional amount for each city or county served by the enhanced 9-1-1 jurisdiction. The department shall, upon request, provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(5) If the department determines that an enhanced 9-1-1 jurisdiction is not adhering to an approved plan for enhanced 9-1-1 service or is not using funds in the manner prescribed in 10-4-312, the department may, after giving notice to the jurisdiction and providing an opportunity for a representative of the jurisdiction to comment on the department's determination, suspend payment from the enhanced 9-1-1 account to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds from the enhanced 9-1-1 account until the department determines that the jurisdiction is complying with the approved plan for enhanced 9-1-1 and fund usage limitations."

Section 5. Section 10-4-313, MCA, is amended to read:

"10-4-313. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless

provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction ~~in accordance with 10-4-311(3)~~ as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the counties with 1% or less than 1% of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (2)(a)(i) and (2)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account."

Section 6. Section 15-30-2339, MCA, is amended to read:

"15-30-2339. Residential property tax credit for elderly — filing date. (1) Except as provided in subsection (2) (3), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim.

(3) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.

(4) In the event that an individual who would have a claim under 15-30-2337 through 15-30-2341 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(5) The department or an individual may revise a return and make a claim under 15-30-2337 through 15-30-2341 within 5 years from the last day prescribed for filing a claim for relief.”

Section 7. Section 15-35-108, MCA, is amended to read:

“15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of {5.8% through September 30, 2013, and beginning October 1, 2013, the amount of} 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$625,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$1.275 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement. (Terminates June 30, 2013—sec. 5, Ch. 459, L. 2009.)

15-35-108. (Effective July 1, 2013) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of {5.8% through September 30, 2013, and beginning October 1, 2013, the amount of} 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement. (Terminates June 30, 2019—secs. 2, 3, Ch. 459, L. 2009.)

15-35-108. (Effective July 1, 2019) Disposal of severance taxes.

Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.”

Section 8. Section 15-36-304, MCA, is amended to read:

“15-36-304. Production tax rates imposed on oil and natural gas — exemption. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) (i) stripper well exemption production	0.5%	14.8%

(ii) stripper well bonus production	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$30 a barrel. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter as determined in subsection ~~(6)(d)~~ (6)(e), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$38 a barrel. If the price of oil is equal to or greater than \$38 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than \$38 a barrel.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil and gas natural resource distribution account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil and gas natural resource distribution account established in 90-6-1001(1) may not exceed 0.3%. The base rate for the tax for oil and gas natural resource distribution account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil and gas natural resource distribution account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section."

Section 9. Section 15-66-102, MCA, is amended to read:

"15-66-102. (Temporary) Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee:

(a) in the amount of \$48 for each inpatient bed day between January 1, 2009, and December 31, 2009; and

(b) beginning January 1, 2010, in the amount of \$50 for each inpatient bed day.

(2) Subject to subsection (3), all proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 17-2-124, be deposited to the credit of the department of public health and human services in a state special revenue account as provided in 53-6-149.

(3) The following amounts must be deposited in the state general fund:

(a) for state fiscal year 2009, proceeds in excess of \$16,232,795;

(b) for state fiscal year 2010, proceeds in excess of \$18,505,269; and

(c) for state fiscal year 2011, proceeds in excess of \$19,818,193. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003—see chapter compiler's comment; sec. 79, Ch. 489, L. 2009. Terminates June 30, 2011—sec. 82, Ch. 489, L. 2009.)

15-66-102. (Effective July 1, 2011, or on occurrence of contingency) Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee:

(a) ~~in the amount of \$27.70 for each inpatient bed day between January 1, 2006, and June 30, 2007;~~

(b) ~~in the amount of \$47 for each inpatient bed day between July 1, 2007, and December 31, 2007;~~

(c) ~~in the amount of \$43 for each inpatient bed day between January 1, 2008, and December 31, 2008;~~

(d) ~~in the amount of \$48 for each inpatient bed day between January 1, 2009, and December 31, 2009; and~~

(e) ~~beginning January 1, 2010, in the amount of \$50 for each inpatient bed day.~~

(2) All proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 17-2-124, be deposited to the credit of the department of public health and human services in a state special revenue account as provided in 53-6-149. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003—see chapter compiler’s comment.)”

Section 10. Section 15-70-324, MCA, is amended to read:

“15-70-324. Examination of records — enforcement of part. (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and may investigate the character of the disposition that any person makes of special fuel in order to ascertain and determine whether all excise taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and must be, if requested by the department, accompanied by the special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed \$500 upon conviction for the first offense, not to exceed \$1,000 upon conviction for the second offense, and not to exceed \$2,000 for each subsequent conviction. Each refusal is a separate offense.

(5) The department shall, upon request from officials to whom ~~are~~ *is* entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada, forward to the officials any information that it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user; ~~provided if~~ *provided if* the other state or states furnish ~~like~~ *similar* information to this state.”

Section 11. Section 16-2-203, MCA, is amended to read:

“16-2-203. Department sales *Sales to licensees.* ~~The department may sell through its stores~~ *Agency liquor stores may sell* to licensees licensed under this code all kinds of liquor and table wine at the posted price ~~thereof in the store~~

in which the liquor and table wine are sold. All sales shall *must* be upon *made on* a cash basis.”

Section 12. Section 16-11-119, MCA, is amended to read:

“16-11-119. (Temporary) Disposition of taxes. (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 \$2 million, whichever is greater, in an account 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. The department of public health and human services may not expend more money from the account than is appropriated by the legislature. Subject to subsection (2) of this section, the department may not transfer funds in the account or expenditure authority related to the account pursuant to 17-7-139, 17-7-301, or 17-8-101.

~~(b) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans’ home in southwestern Montana;~~

~~(e)(b)~~ 2.6% in the long-range building program account provided for in 17-7-205;

~~(d)(c)~~ 44% in the health and medicaid initiatives account provided for in 53-6-1201; and

~~(e)(d)~~ the remainder to the state general fund.

(2) If money in the state special revenue account 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.

(3) 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. (Terminates June 30, 2011—sec. 35(1), Ch. 486, L. 2009.)

16-11-119. (Effective July 1, 2011) Disposition of taxes. (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 \$2 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) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans’ home in southwestern Montana;~~

~~(e)(b)~~ 2.6% in the long-range building program account provided for in 17-7-205;

~~(d)(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

~~(e)(d)~~ the remainder to the state general fund.

(2) 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.

(3) 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.”

Section 13. Section 17-1-511, MCA, is amended to read:

“17-1-511. General fund transfer. ~~(1) By November 1, 2008, the department of revenue shall determine the total amount of the tax credit claimed under 15-30-2369 through 15-30-2372 that was taken by physicians practicing in rural areas for tax years 2006 and 2007 and calculate the average of those amounts. The department of revenue shall report the average amount determined under this subsection to the state treasurer.~~

~~(2) (a) For the fiscal year beginning July 1, 2008, the state treasurer shall transfer 25% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501. The transfer under this subsection (2)(a) may not occur until after the amount is reported by the department of revenue under subsection (1).~~

~~(b) For the fiscal year beginning July 1, 2009, the state treasurer shall transfer 50% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.~~

~~(c) For the fiscal year beginning July 1, 2010, the state treasurer shall transfer 75% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.~~

~~(d) For each *Each* fiscal year beginning after June 30, 2011, the state treasurer shall transfer 100% of the amount reported under subsection (1) section 2(1), Chapter 361, Laws of 2007, from the general fund to the state special revenue account created in 20-26-1501.”~~

Section 14. Section 20-7-1201, MCA, is amended to read:

“20-7-1201. Montana virtual digital academy — purposes — governance. (1) There is a Montana virtual digital academy at a unit of the Montana university system.

(2) The purposes of the Montana virtual digital academy are to:

- (a) make distance learning opportunities available to all school-age children through public school districts in the state of Montana;
- (b) offer high-quality instructors who are licensed and endorsed in Montana and courses that are in compliance with all relevant education and distance learning rules, standards, and policies; and
- (c) emphasize the core subject matters required under the accreditation standards, offer advanced courses for dual credit in collaboration with the Montana university system, and offer enrichment courses.

(3) The Montana virtual digital academy must be governed by a board with equal representation from:

- (a) the commissioner of higher education or a designee;
- (b) the superintendent of public instruction or a designee;
- (c) a Montana-licensed and Montana-endorsed classroom teacher appointed by the board of public education;
- (d) a Montana-licensed school district administrator appointed by the board of public education;

(e) a trustee of a Montana school district appointed by the board of public education;

(f) the dean of the school of education of the hosting unit of the Montana university system or a designee as a nonvoting member; and

(g) the two officers provided for in subsection (5) as nonvoting members.

(4) The governing board shall elect a presiding officer and vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director who shall serve as chief executive officer and vice chief executive officer respectively on the governing board in a nonvoting capacity. The program director shall develop and, upon approval of the governing board, implement policies and guidelines for the Montana ~~virtual~~ *digital* academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;

(f) course evaluation;

(g) grant opportunities; and

(h) other activities that are essential to the success of a statewide distance learning program.”

Section 15. Section 20-9-235, MCA, is amended to read:

“20-9-235. Authorization for school district investment account. (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district’s budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) ~~except as provided in subsection (4)(b),~~ coincide with fiscal years beginning on July 1 and ending on June 30.

~~(b) An agreement that establishes a school district investment account for fiscal year 2002 must be entered into no later than October 1, 2001.~~

~~(e)(b)~~ The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Except for debt service money that the county treasurer is required by law to collect and report to the districts, all other revenue may be sent directly to a participating district's investment account.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts."

Section 16. Section 25-9-608, MCA, is amended to read:

"25-9-608. Saving clause. This part does not prevent the recognition of a ~~foreign~~ *foreign-country* judgment in situations not covered by this part."

Section 17. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) “Commodity option” means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) “Federal covered adviser” means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

(9) “Federal covered security” means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) “Guaranteed” means guaranteed as to payment of principal, interest, or dividends.

(11) (a) “Investment adviser” means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person’s profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) *of this section* is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person", ~~for the purpose of parts 1 through 3 of this chapter,~~ means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

(i) an issuer in:

(A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "~~Public Utility Holding Company Act of 1935~~", "*Energy Policy Act of 2005*", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any:

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) commodity investment contract;

(vi) commodity option;

(vii) debenture;

(viii) evidence of indebtedness;

(ix) certificate of interest or participation in any profit-sharing agreement;

(x) collateral-trust certificate;

(xi) preorganization certificate or subscription; transferable shares;

(xii) investment contract;

(xiii) voting-trust certificate;

(xiv) certificate of deposit for a security;

(xv) viatical settlement purchase agreement;

(xvi) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or;

(xvii) in general, any:

(A) interest or instrument commonly known as a security; ~~any;~~

(B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security; or

(C) ~~any~~ certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the ~~foregoing items in this subsection (22)(a)(xvii).~~

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 18. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 and 30-10-211 do not apply to any of the following securities:

(1) any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of ~~the foregoing; provided, however those entities.~~ *However,* 30-10-202 through 30-10-207 and 30-10-211 apply to a security issued by any of ~~the foregoing those entities~~ that is payable solely from payments to be received in respect of ~~to~~ property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise; unless the enterprise or any security of which it is the issuer is within any of the exemptions ~~enumerated listed~~ in subsections (2) through (15). ~~of this section;~~

(2) any security issued or guaranteed by Canada, a Canadian province, a political subdivision of a province, or an agency or corporate or other instrumentality of one or more of ~~the foregoing those entities~~ or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by a bank organized under the laws of the United States or a bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in, or a debt of, or guaranteed by a federal savings and loan association or a building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by a railroad, other common carrier, public utility, or holding company that is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the ~~Public Utility Holding Company Act of 1935~~ *Energy Policy Act of 2005* or a subsidiary of a registered holding company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; ~~also~~ *A security referred to under this subsection (6)(d) includes equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by the railroad or public utility would be exempt under this subsection; (6)(d).*

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed an authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been registered for the 3 years immediately preceding the offering date;

(c) the issuer or a significant subsidiary has not had a material default during the last 7 years, or during the issuer's existence if that period is less than 7 years, in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1 million in 4 of its last 5 fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities, has had for its last fiscal year ~~such~~ *consolidated* net income, ~~but~~ before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year", as used in this subsection (7)(d), means the most recent year for which audited financial statements are available; provided that the statements cover a fiscal period *that* ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, the securities have voting rights and rights including the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares; except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on that date there are at least 750,000 of the shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by ~~any~~ *a* person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of \$50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within the 20-day period;

(9) any commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for the current transaction and that evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of the paper that is likewise limited or any guarantee of the paper or of any renewal, when the commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; *for listing as provided in this subsection*, or any warrant or right to purchase or subscribe to any of the ~~foregoing securities listed in this subsection~~. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; *for listing as provided in this subsection*, or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(14) any security issued by and representing an interest in, or a debt of, or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state;

(15) any security for which an offer or sale is not directed to or received by a person in this state, ~~and~~ *when* the issuer does not maintain a place of business in the state."

Section 19. Section 30-13-338, MCA, is amended to read:

"30-13-338. Trademark counterfeiting — presumption — penalties — restitution — forfeiture. (1) (a) A person commits the offense of trademark counterfeiting if the person knowingly manufactures, distributes, transports, offers for sale, sells, or possesses with intent to sell or distribute any goods, services, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services bearing a counterfeit mark.

(b) A person having possession, custody, or control of more than 25 ~~items of~~ *items of* goods, labels, patches, fabric, stickers, wrappers, badges, emblems,

medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature bearing a counterfeit mark must be presumed to possess the items with intent to offer for sale, sell, or distribute the items.

(2) (a) A person convicted of the offense of trademark counterfeiting shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offense involves less than 100 items bearing one or more counterfeit marks or the total retail value is less than \$1,000. A person convicted of a second offense shall be fined \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) If the offense involves 100 items or more bearing one or more counterfeit marks and the retail value is \$1,000 or more, the person shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) When imposing sentence on a person convicted of a violation of this section, the court may order restitution as provided in 30-13-335 to any person harmed by the trademark counterfeiting.

(4) (a) Any items bearing a counterfeit mark and all personal property employed or used in connection with counterfeiting, including but not limited to any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, must be seized by law enforcement officials who have the opportunity to take possession of the items or personal property.

(b) All seized items and personal property referenced in this subsection (4) must be forfeited and may, upon request of the registrant, be released to the registrant for destruction or destroyed by an officer of the court as provided in 30-13-335 unless the registrant agrees to another disposition of the seized items or personal property.”

Section 20. Section 32-2-406, MCA, is amended to read:

“32-2-406. Investments. (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal deposit insurance corporation lawfully issued pursuant to ~~Title IV of the National Housing Act 12 U.S.C. 1824;~~

(d) improved real estate that has been sold under contract, including suburban homes or farm lands but not including mining property. However, the total amount remaining invested in real estate, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount invested in real estate may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property purchased, whichever is the lesser.

(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not ~~over~~ *more than* 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money *eligible for investment that is* in its custody or possession, ~~eligible for investment~~, in debentures issued by the federal housing administrator and in obligations of national mortgage associations.”

Section 21. Section 32-9-103, MCA, is amended to read:

“32-9-103. Definitions. As used in this part, the following definitions apply:

(1) “Administrative or clerical tasks” mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) “Approved education course” means any course approved by the nationwide mortgage licensing system and registry.

(3) “Approved test provider” means any test provider approved by the nationwide mortgage licensing system and registry.

(4) “Bona fide third party” means a person that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(5) “Borrower” means a person seeking a residential mortgage loan.

(6) “Branch office” means a location other than a licensee’s principal place of business.

(7) (a) “Control” means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

(8) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

(10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

(11) "Entity" means a business organization, including a sole proprietorship.

(12) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender and is maintained solely for the holding and payment of escrow funds.

(13) "Escrow funds" means funds entrusted to a mortgage lender by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

(14) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(15) "Immediate family member" means a spouse, child, sibling, *parent*, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

(18) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

(19) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(20) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(21) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection (21), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

(22) “Mortgage lender” means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

(23) (a) “Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain:

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129; or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(24) “Mortgage servicer loss mitigation specialist” means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower’s obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

(25) “Nationwide mortgage licensing system and registry” means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage loan originators, and registered mortgage loan originators.

(26) “Nontraditional mortgage product” means any mortgage product other than a 30-year, fixed-rate mortgage.

(27) “Person” means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(28) “Real estate brokerage activities” means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections (28)(a) through (28)(d).

(29) “Registered mortgage loan originator” means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(30) “Residential mortgage loan” means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v), or on residential real estate located in Montana.

(31) “Residential real estate” means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower’s intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

(32) “Trust account” means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.

(33) “Ultimate equity owner” means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(34) “Unique identifier” means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. (See compiler’s comment regarding contingent suspension.)”

Section 22. Section 33-2-1323, MCA, is amended to read:

“33-2-1323. Confidentiality of proceedings. In all proceedings and judicial reviews under 33-2-1321 and 33-2-1322, all records of the insurer, *all* other documents, and all files and court records and papers of the commissioner, *so as far as they pertain to or are a part of the record of the proceedings, remain confidential except as necessary to obtain compliance with the records, documents, files, or papers, proceedings* unless the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until the court order, all papers filed with the clerk of the district court must be held in a confidential file.”

Section 23. Section 35-16-303, MCA, is amended to read:

“35-16-303. Withdrawal of membership land — procedure. (1) *Any A* person ~~holding~~ *who holds* title or evidence of title to membership land included in a corporation or district organized under the provisions of this chapter ~~desiring and who desires~~ to withdraw the person’s land from the corporation or district may do so upon:

(a) presenting to the board of directors a verified petition stating that the person is the holder of title or evidence of title to membership land included in the corporation or district, particularly describing the land with a map or plat, that the person wishes to withdraw from the corporation or district; and

(b) tendering to the board the pro rata amount of liability of the person’s land for all of the corporation’s lawfully created and existing lien liabilities together with the person’s pro rata amount of interest due and to become due upon any liabilities *up* to the maturity of the liabilities.

(2) If the matters and things set forth in the petition are true and the petitioner deposits with the board the petitioner's pro rata amount of the liabilities or furnishes a receipt for the amount from the mortgage *holders* or lienholders holding liens against the ~~lands~~ *land*, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of the ~~lands~~ *land* from the corporation or district and its liabilities.

(3) Upon presentation of the release to the mortgage holder or lienholder claiming a right against the membership ~~lands~~ *land*, ~~they~~ *the mortgage holder or lienholder* shall furnish ~~their~~ a release, which may be filed and recorded in any county or counties in which the land is located.

(4) The board of directors and corporate assets of the corporation must be responsible to any mortgage *holder* or lienholder and *to the withdrawee person withdrawing the land* for the ~~payments~~ *payment* of funds on ~~their~~ *the* debt or liability."

Section 24. Section 37-15-103, MCA, is amended to read:

"37-15-103. Exemptions. (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 ~~holds a certificate of registration~~ *is licensed* in this state as a hearing aid ~~dealer~~ *dispenser* from performing the functions for which the person qualifies and that are described in Title 37, chapter 16.

(8) This chapter does not exempt an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16.”

Section 25. Section 46-6-412, MCA, is amended to read:

“46-6-412. Arrest by ~~officer of United States customs service and border protection officer or immigration and naturalization service~~ *customs enforcement officer.* ~~An officer of the A United States customs service and border protection officer or immigration and naturalization service~~ *customs enforcement officer* may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

(1) A person commits or attempts to commit an offense in the officer’s presence.

(2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require the person’s immediate arrest.

(3) The officer believes on reasonable grounds that a warrant for the person’s arrest has been issued in this state.

(4) The officer believes on reasonable grounds that a felony warrant for the person’s arrest has been issued in another jurisdiction.”

Section 26. Section 50-4-504, MCA, is amended to read:

“50-4-504. Definitions. As used in this part, the following definitions apply:

(1) ~~“Department” means the department of public health and human services provided for in Title 2, chapter 15, part 22.~~

(2)(1) “Health care” includes both physical health care and mental health care.

(3) ~~“Health care facility” means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.~~

(4)(2) “Health care provider” or “provider” means a person who is 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.

(5)(3) “Health insurer” means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.”

Section 27. Section 50-15-114, MCA, is amended to read:

“50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than \$1,000 or be imprisoned for not more than 1 year, or both, if:

(a) the person willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment of a report, record, or certificate or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, the person makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) the person willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, the person willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that the certificate or certified copy was issued upon a record that is false in whole or in part or that relates to the birth of another person;

(e) the person willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than \$25 or more than \$500, imprisoned for not more than 30 days, or both, if the person:

(a) knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) refuses to provide information required by law;

(c) willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon ~~him~~ *the person* by law.”

Section 28. Section 50-40-104, MCA, is amended to read:

“50-40-104. Smoking in enclosed public places prohibited — notice to public — places where prohibition inapplicable. (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, that smoking in the enclosed public place is prohibited.

(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

~~(4) The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(e) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted.~~

~~(5)~~(4) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

~~(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;~~

~~(b)~~(a) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

~~(e)(b)~~ a private motor vehicle;

~~(e)(c)~~ school property in which smoking is allowed pursuant to the exception in 20-1-220;

~~(e)(d)~~ a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and

~~(e)(e)~~ a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.”

Section 29. Section 50-40-201, MCA, is amended to read:

“50-40-201. Local government buildings — smoking prohibited. (1)

In all parts of buildings maintained by a political subdivision, smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only ~~must be smoke-free on January 1, 2006. Buildings and buildings~~ leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006; and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public.”

Section 30. Section 53-6-1001, MCA, is amended to read:

“53-6-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) “Average wholesale price” means the wholesale price charged on a specific drug that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.~~

~~(2)(1)~~ “Department” means the department of public health and human services provided for in Title 2, chapter 15, part 22.

~~(3)(2)~~ “Discounted price” means a price set by the department by rule pursuant to 53-6-1002.

~~(4) “Gross household income” has the meaning provided in 15-30-2337.~~

~~(5)(3)~~ “Manufacturer” means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

~~(6)(4)~~ “Participating retail pharmacy” means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

~~(7)(5)~~ “Program” means the prescription drug plus discount program provided for in 53-6-1002.

(8)(6) “Secondary discounted price” means the discounted price less any further discounts funded by manufacturer rebates for medication purchased by participants in the program.”

Section 31. Section 61-11-203, MCA, is amended to read:

“61-11-203. Definitions — *habitual traffic offenders* — *point schedule*. (1) As used in this part, the following definitions apply:

(1)(a) “Conviction” has the meaning provided in 61-5-213.

(2)(b) “Habitual traffic offender” means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection: *subsection (2)*.

~~(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;~~

~~(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;~~

~~(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;~~

~~(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;~~

~~(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;~~

~~(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as described in 61-7-105, 8 points;~~

~~(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;~~

~~(h) reckless driving, 5 points;~~

~~(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;~~

~~(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;~~

~~(k) operating a motor vehicle without a license to do so, 2 points. However, this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired.~~

~~(l) speeding, except as provided in 61-8-725(2), 3 points;~~

~~(m) all other moving violations, 2 points.~~

~~(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.~~

~~(4)(c) “License” means any type of license or permit to operate a motor vehicle.~~

~~(5)(d) “Moving violation” means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway.~~

(6)(e) ~~A traffic regulation~~ “Traffic regulation” includes any provision governing motor vehicle operation, equipment, safety, or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking.

(2) Subject to subsection (3), the point schedule used to determine whether an individual is a habitual traffic offender is as follows:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as described in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points. However, this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired.

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.”

Section 32. Section 69-3-111, MCA, is amended to read:

“69-3-111. Persons with interest in property leased or to be sold to public utility — exemption. (1) Upon application, the commission ~~may~~, by order, ~~may~~ determine that any person not otherwise a public utility is not a public utility subject to the jurisdiction, control, or regulation of the commission under this title; solely because ~~such~~ *the* person owns or controls any plant or equipment, any part of or undivided interest in a plant or equipment, or any water right described in 69-3-101:

(a) ~~which~~ *that* is leased or sold or held for lease or sale to any public utility or other lessee; ~~or~~

(b) the operation and use of which is vested by lease or other contract in a public utility or other lessee; or

(c) for a period of not more than 90 days after termination of any lease or contract described in subsection (1)(a) or (1)(b) or after ~~such~~ *the* person gains possession of ~~such~~ *the* property following a breach of ~~such~~ *a* lease or contract.

(2) ~~Any~~ *An* order ~~once~~ *issued* may not be revoked or modified by the commission unless there is a material change in the lease or contract terms forming the basis of ~~such~~ *the* order.

(3) The commission may, upon application by a public utility, issue its order approving the terms of any lease or contract described in subsection (1)(a) or (1)(b) for the purpose of qualifying any party ~~thereto to the lease or contract~~ for an exemption by the United States securities and exchange commission, or its successor, from the federal ~~Public Utility Holding Company Act of 1935~~ *Energy Policy Act of 2005*.

(4) A public utility, as lessee of any plant or equipment, any part of; or undivided interest in; a plant or equipment, or any water right described in 69-3-101, ~~which~~ *that* is subject to any lease or contract described in this section; shall comply with this title, regarding ~~such~~ *the* plant, equipment, or water right.

(5) Nothing in this section may be construed to alter or modify the authority of the commission to regulate the rates and services of a public utility that is subject to the provisions of this title.”

Section 33. Section 69-3-2004, MCA, is amended to read:

“69-3-2004. Renewable resource standard — administrative penalty — waiver. (1) Except as provided in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility’s retail sales of electrical energy in Montana in the calendar year 2011.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.

(b) The ~~standard~~ standards in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility or competitive electricity supplier has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the ~~standard~~ standards established in subsections (2) through (4), a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) through (4).

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in ~~69-8-412(1)(a)~~ 69-8-412(1)(b).

(11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in

subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract.”

Section 34. Section 69-5-104, MCA, is amended to read:

“69-5-104. Continuation of electric service facilities to existing consumers. Each electric service facilities provider has the right to provide electric service facilities to all premises being served by it or to which any of its facilities are attached on May 2, 1997.”

Section 35. Section 70-27-111, MCA, is amended to read:

“70-27-111. Parties defendant. (1) A person, other than the tenant of the premises and a subtenant, if there is one, ~~in the actual occupation of occupying~~ the premises when the complaint is filed need *not* be made ~~parties a party~~ defendant in the proceeding, ~~nor shall any~~ and a proceeding *may not* abate or the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant. However, when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against that party.

(2) If a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by 70-27-108(2) upon the tenant of the premises, the fact that the notice was not served on each subtenant does not constitute a defense to the action.

(3) If a married person is a tenant or subtenant, failure to join the person’s spouse does not constitute a defense. However, if the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant may be enforced only against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by the tenant’s or subtenant’s spouse.

(4) All persons who enter the premises ~~under the tenant~~ after the commencement of the action are bound by the judgment *in the same manner* as if they had been made party to the action.”

Section 36. Section 72-3-916, MCA, is amended to read:

“72-3-916. Distribution to trustee — registration — bond. (1) Before ~~distributing~~ *making a distribution* to a trustee, the personal representative may require that the trust be registered; if the state in which it is to be administered provides for registration; and *may require* that the trustee inform in writing the current beneficiaries and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of the trustee’s name and

address and provide each with a copy of the terms of the trust that describe or affect the interest of the beneficiaries and with relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from ~~giving~~ *posting* bond, the personal representative may petition the appropriate court to require that the trustee post bond if the ~~trustee~~ *personal representative* believes that distribution might jeopardize the interests of persons who are not able to protect themselves; and the ~~trustee~~ *personal representative* may withhold distribution until the court has acted.

(3) An inference of negligence on the part of the personal representative may not be drawn from the personal representative's failure to exercise the authority conferred by subsections (1) and (2)."

Section 37. Section 75-1-207, MCA, is amended to read:

"75-1-207. Major facility siting applications excepted. (1) Except as provided in subsection (2), a fee as prescribed by this part may not be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(2) The department of *environmental quality* may require payment of costs under 75-1-205(1)(a) by a person who files a petition under 75-20-201(5)."

Section 38. Section 75-15-103, MCA, is amended to read:

"75-15-103. Definitions. As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means ~~for purposes of subsection (14)~~ those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities are considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence;

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area that is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances, regulations, or enabling state legislation, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim *zoning district or interim* regulation ~~or map~~ adopted as an emergency measure pursuant to 76-2-206 are not covered by this definition.

(3) "Commission" means the transportation commission of Montana.

(4) "Department" means the department of transportation.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information that the commission may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of this part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure that is designed, intended, or used to advertise or inform and that is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of the traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance that is occupied by one or more commercial or industrial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities.

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, that has a population of 5,000 or more and that is within boundaries fixed by the department. The boundaries must at a minimum encompass the entire urban place designated by the bureau of the census.

(16) "Visible" means capable of being seen and legible without visual aid by a person of normal visual acuity."

Section 39. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

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

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

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

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

(8) "Facility" means, *subject to 75-20-1202*:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field

standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas.

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

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

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

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

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 40. Section 76-2-303, MCA, is amended to read:

“76-2-303. Procedure to administer certain annexations and zoning laws — hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days’ notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation, ~~provided that~~ *if* the proposed municipal zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to *Title 76, chapter 2, part 1 or 2 of this chapter*; or

(iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to *Title 76, chapter 1, of this title or in a master plan, as provided for in 76-2-304(3)*, for the annexed property.

(b) A joint hearing authorized under this subsection (3) fulfills a municipality’s obligation regarding zoning notice and public hearing for a proposed annexation.”

Section 41. Section 82-11-111, MCA, is amended to read:

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

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

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

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

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

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

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from that pool by any existing well or a well drilled after that date and producing from that pool to less

than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

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

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

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

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

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

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

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

(iii) inspect monitoring equipment or methods; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) inspect monitoring equipment or methods; and

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

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

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161 or the geologic storage reservoir program account established in ~~85-11-181~~ 82-11-181:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 42. Section 85-2-436, MCA, is amended to read:

“85-2-436. Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource — change in appropriation rights by department of fish, wildlife, and parks until June 30, 2019. (1) The department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance streamflows to benefit the fishery resource.

(2) The change in purpose of use or place of use must meet all the criteria and process of 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process in subsection (3) of this section to protect the rights of other appropriators from adverse impacts.

(3) (a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource.

(b) Upon receipt of a correct and complete application for a change in purpose of use or place of use from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed change in appropriation right may file an objection as provided in 85-2-308. A change in appropriation right may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a change of an existing appropriation right for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a change in appropriation right authorization must include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be changed to instream flow is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the change in appropriation right authorization, may be used to protect, maintain, or enhance streamflows below the point of diversion that existed prior to the change in appropriation right.

(e) A lease for instream flow purposes may be entered for a term of up to 10 years, except that a lease of water made available from the development of a water conservation or storage project may be for a term equal to the expected life of the project but not more than 30 years. All leases may be renewed an indefinite number of times but not for more than 10 years for each term. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A change in appropriation right authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (3)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a change in appropriation right authorization must be obtained according to the requirements of 85-2-402.

(f) The department may modify or revoke the change in appropriation right authorization up to 10 years after it is approved if an appropriator other than an appropriator described in subsection (3)(i) submits new evidence not available

at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease or change in appropriation right under this section is the same as the priority of appropriation of the right that is changed to an instream flow purpose.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of a leased appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a change in appropriation right authorization under this section may not object to the exercise of the changed water right according to its terms or the reversion of a leased appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan required under this section.

(4) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and environmental quality council a biennial progress report by December 1 of odd-numbered years. This report must include a summary of all appropriation rights changed to an instream flow purpose in the last 2 years.

(b) For each change in appropriation right to an instream flow purpose, the report must include a copy of the change authorization issued by the department and must address:

- (i) the length of the stream reach and how it is determined;
- (ii) critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource;
- (iii) the amount of water available for instream flow as a result of the change in appropriation right;
- (iv) contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and
- (v) methods used to monitor use of water under each change in appropriation right.

(5) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired.

(6) (a) From May 8, 2007, through June 30, 2019, the department of fish, wildlife, and parks may change, pursuant to this section, the appropriation rights that it holds in fee simple to instream flow purposes on no more than 12 stream reaches.

(b) After June 30, 2019, the department of *fish, wildlife, and parks* may not change the appropriation rights that it holds in fee simple to instream flow purposes on any stream reaches.

(7) After June 30, 2019, the department of *fish, wildlife, and parks* may not enter into any new lease agreements pursuant to this section or renew any leases that expire after that date."

Section 43. Section 87-2-101, MCA, is amended to read:

“87-2-101. Definitions. As used in 87-1-102, *Title 87*, chapter 3, and this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Angling” or “fishing” means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) “Bait” means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) “Closed season” means the time during which game birds, *game fish*, and game *animals*, and fur-bearing animals may not be lawfully taken.

(4) “Commission” means the state fish, wildlife, and parks commission.

(5) “Fur-bearing animals” means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(6) “Game animals” means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(7) “Game fish” means all species of the family ~~salmonidae~~ *Salmonidae* (chars, trout, salmon, grayling, and whitefish); all species of the genus ~~stizostedion~~ *Sander* (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus ~~esox~~ *Esox* (northern pike, pickerel, and muskellunge); all species of the genus ~~micropterus~~ *Micropterus* (bass); all species of the genus ~~polyodon~~ *Polyodon* (paddlefish); all species of the family ~~aeipenseridae~~ *Acipenseridae* (sturgeon); all species of the genus ~~lota~~ *Lota* (burbot or ling); the species ~~perca~~ *Perca flavescens* (yellow perch); all species of the genus ~~pomoxis~~ *Pomoxis* (crappie); and the species ~~ictalurus~~ *Ictalurus punctatus* (channel catfish).

(8) “Hunt” means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(9) “Migratory game birds” means:

(a) waterfowl, including wild ducks, wild geese, brant, and swans;

(b) cranes, including little brown and sandhill;

(c) rails, including coots;

(d) ~~wilson’s~~ *Wilson’s* snipes or jacksnipes; and

(e) mourning doves.

(10) “Nongame wildlife” means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(11) "Open season" means the time during which game birds, *game* fish, and game *animals*, and fur-bearing animals may be lawfully taken.

(12) "Person" means ~~individuals, associations, partnerships, and corporations~~ *an individual, association, partnership, or corporation*.

(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(15) "Upland game birds" means ~~sharptailed~~ *sharp-tailed* grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 44. Section 87-3-236, MCA, is amended to read:

"87-3-236. (Temporary) Warm water game fish surcharge and stamp — warm water game fish defined — accounts established — dedication of revenue to Fort Peck multispecies fish hatchery. (1) A person who is required to be licensed in order to fish in Montana and who desires to fish in waters listed pursuant to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, Class B-5, or Class A-8 fishing license, pay a warm water game fish surcharge of \$5. The surcharge is in addition to the license fee established for each class of license and entitles the holder to fish in the waters listed pursuant to subsection (9) as authorized by the department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the fishing license.

(2) A warm water game fish stamp is valid for the license year in which it is purchased.

(3) Revenue from the warm water game fish surcharge must be placed in the account created in subsection (5) and may be used only for the purposes set out in subsection (7).

(4) As used in this section, "warm water game fish" includes but is not limited to all species of the genera ~~Stizostedion~~ *Sander*, *Esox*, *Micropterus*, and *Lota* and includes largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (~~Stizostedion vitreum~~) (*Sander vitreus*), sauger (~~Stizostedion canadense~~) (*Sander canadensis*), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*), yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), pallid sturgeon (*Scaphirhynchus albus*), paddlefish (*Polyodon spathula*), ~~other warm water species classified as species of special concern, threatened, or endangered,~~ chinook salmon (*Oncorhynchus tshawytscha*), ~~and tiger muskellunge, and other warm water species classified as species of special concern, threatened, or endangered.~~

(5) There is an account into which must be deposited:

(a) all proceeds from the warm water game fish surcharge established in subsection (1); and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the Fort Peck multispecies fish hatchery.

(6) The department shall administer the account within the state special revenue fund established in 17-2-102.

(7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by the department for the operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery established in 87-3-235, which may include the costs incurred in eradicating illegally introduced warm water species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

(8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than those in the account provided for in subsection (5). There is an account in the federal special revenue fund into which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and from which the department may use funds for the hatchery authorized in 87-3-235.

(9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish hatchery will be planted. All waters listed in the Montana fishing regulations that require a warm water stamp and waters planted or waters that will be planted with fish from the Fort Peck multispecies fish hatchery must be permanently included on the list. The waters designated in the list are the only waters for which a warm water game fish stamp is required. (Repealed effective March 1, 2012—secs. 3, 4(2), Ch. 431, L. 2009.)”

Section 45. Section 87-5-714, MCA, is amended to read:

“87-5-714. Wildlife species authorized for introduction or transplantation. (1) The following wildlife species may be introduced or transplanted by the department based upon scientific investigation and upon approval of the commission:

- (a) gray (Hungarian) partridge (*Perdix perdix*);
- (b) chukar partridge (*Alectoris chukar*);
- (c) ring-necked pheasant (*Phasianus colchicus*);
- (d) turkey (*Meleagris gallopavo*);
- (e) rainbow trout (*Salmo gairdneri*);
- (f) golden trout (*Salmo aquabonita*);
- (g) brown trout (*Salmo trutta*);
- (h) brook trout (*Salvelinus fontinalis*);
- (i) lake trout (*Salvelinus namaycush*);
- (j) northern pike (*Esox lucius*);
- (k) black bullhead (*Ictalurus melas*);
- (l) yellow bullhead (*Ictalurus natalis*);
- (m) largemouth bass (*Micropterus salmoides*);
- (n) smallmouth bass (*Micropterus dolomieu*);
- (o) pumpkinseed sunfish (*Lepomis gibbosus*);
- (p) bluegill (*Lepomis macrochirus*);
- (q) green sunfish (*Lepomis cyanellus*);
- (r) rock bass (*Ambloplites rupestris*);
- (s) black crappie (*Pomoxis nigromaculatus*);
- (t) white crappie (*Pomoxis annularis*);
- (u) yellow perch (*Perca flavescens*);
- (v) walleye (~~*Stizostedion vitreum*~~) (*Sander vitreus*);

- (w) cisco (tulibee) (*Coregonus artedii*);
- (x) spottail shiner (*Notropis hudsonius*);
- (y) kokanee salmon (*Oncorhynchus nerka*);
- (z) chinook salmon (*Oncorhynchus tshawytscha*);
- (aa) lake whitefish (*Coregonus clupeaformis*);
- (bb) golden shiner (*Notemigonus crysoleucas*).

(2) The commission may by rule and subject to the provisions of 87-5-711 authorize the department to transplant or introduce species of wildlife not listed in subsection (1)."

Section 46. Section 90-3-1301, MCA, is amended to read:

"90-3-1301. Geothermal research. (1) Subject to subsection (2), the Montana bureau of mines and geology may conduct geothermal research that:

- (a) characterizes the geothermal resource base in Montana;
- (b) tests high-temperature and high-pressure drilling technologies benefiting geothermal well construction; and
- (c) determines reservoir characterization, monitoring, and modeling necessary for commercial application in Montana.

(2) If the research is conducted on private property, the bureau must have written agreements with:

(a) the surface property owner and any owners of the geothermal resource for access and use of the site for research purposes; and

(b) subject to subsections (3) and (4), the utility, as defined in 69-5-102, with a service area nearest the research site if the utility intends to commercially develop the site.

(3) If the utility with a service area nearest the research site intends to develop the site for future commercial use, the utility shall:

(a) contribute, at a minimum, 25% of the research costs as determined by the bureau for research at the site; and

(b) have an agreement in place with the surface property owner and any owners of the geothermal resource where the research site is located for future development of the geothermal resource.

(4) If the utility with a service area nearest the research site does not intend to develop the site for commercial use, the utility with a service area next nearest the site may enter into a written agreement pursuant to subsection (2)(b). If a utility does not intend to develop the site for future commercial use, the agreement pursuant to subsection (2)(b) is not required.

(5) In determining the utility with a service area nearest the site, all measurements must be made on the shortest vector that can be drawn from the line nearest the service area to the nearest portion of the geothermal site.

(6) Prior to September 1 of each even-numbered year, the bureau shall update the energy and telecommunications interim committee on research conducted pursuant to this section and funding received pursuant to 90-3-1302.

~~{(a) a ranking of the top five locations in Montana that offer the best opportunity for near-term development of geothermal energy; and~~

~~(b) an estimate of the cost associated with development of each site.}~~"

Section 47. Section 8, Chapter 330, Laws of 2009, is amended to read:

"Section 8. Termination. ~~{Section 3} terminates [Sections 1 and 3] terminate June 30, 2013."~~

Section 48. Repealer. The following section of the Montana Code Annotated is repealed:

5-11-221. Distribution of proceedings of 1972 constitutional convention.

Section 49. Directions to code commissioner. The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 62nd legislature.

Approved March 16, 2011

CHAPTER NO. 20

[SB 62]

AN ACT ELIMINATING THE PUBLIC SERVICE COMMISSION'S ABILITY TO ASSIGN CUSTOMERS TO ELECTRICITY BUYING COOPERATIVES; AMENDING SECTION 35-19-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 35-19-107, MCA, is amended to read:

“35-19-107. Membership. (1) Membership in a buying cooperative is restricted to small customers of a distribution utility.

(2) A member may join a buying cooperative by the methods prescribed in the buying cooperative's bylaws ~~or may be assigned to a buying cooperative by the public service commission, as provided by commission rule.~~”

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

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

Approved March 16, 2011

CHAPTER NO. 21

[SB 72]

AN ACT REVISING THE AUTHORITY OF THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR COMMUNITY CORRECTIONS PROGRAMS; AND AMENDING SECTION 53-1-203, MCA.

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

Section 1. Section 53-1-203, MCA, is amended to read:

“53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) *subject to subsection (6)*, adopt rules necessary:

(i) to carry out the purposes of 41-5-125, ~~rules necessary~~;

(ii) for the siting, establishment, and expansion of prerelease centers, ~~rules~~;

(iii) *for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process*;

(iv) for the establishment and maintenance of residential methamphetamine treatment programs; and

(v) rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;

~~However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.~~

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations *or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments* to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103, except as provided in 41-5-2012;

(h) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on juvenile parole supervision.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community

support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.”

Approved March 16, 2011

CHAPTER NO. 22

[HB 39]

AN ACT ADOPTING THE MOST RECENT APPLICABLE FEDERAL MILITARY LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE IN THE MONTANA NATIONAL GUARD; AMENDING SECTION 10-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

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

“10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, 2009 2011, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, 2009 2011, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.”

Section 2. Applicability. [This act] applies to events that occur and proceedings begun on or after October 1, 2011.

Approved March 18, 2011

CHAPTER NO. 23

[HB 76]

AN ACT RELIEVING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE POWER TO REMOVE OBSTRUCTIONS IN FLOODWAYS; ELIMINATING THE OBSTRUCTION PERMIT FEE AND THE FLOODWAY OBSTRUCTION REMOVAL FUND; AMENDING SECTIONS 76-5-208 AND 76-5-405, MCA; REPEALING SECTIONS 76-5-206 AND 76-5-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-5-208, MCA, is amended to read:

“76-5-208. Orders and rules. (1) The department may adopt orders and rules ~~that are necessary~~ to implement parts 1 through 4 of this chapter. All orders and rules must be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

~~(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order may not become effective less than 10 days after a hearing is held relating to the order.~~

~~(3)(2) In addition to any requirement imposed by 76-5-202 through 76-5-205, when an order is issued that affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing must be mailed to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined: the department shall provide notice by mail to the titleholder of land adjacent to a watercourse or drainway that would be specifically affected by a proposed order. The notice must be provided at least 10 days prior to a hearing, if one is required, or at least 10 days prior to the effective date of the order if a hearing is not required.”~~

Section 2. Section 76-5-405, MCA, is amended to read:

“76-5-405. Variance for obstruction or nonconforming use. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must be submitted to the department or the responsible political subdivision and contain the information that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated flood plain or designated floodway of watercourses must be ~~specifically~~ approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated flood plains or designated floodways are conclusively considered to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after a time that the department or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to 76-5-406 and this section.

~~(3) An application for a permit must be accompanied by a nonrefundable application fee of \$10, which the state treasurer shall credit to the floodway obstruction removal fund.~~

~~(4)(3) The department or the responsible political subdivision may make a part of issue the permit any with reasonable conditions that it may consider advisable. In order for the permit to continue to remain in force, the The permitted obstruction or use must be maintained so as to comply with the conditions and specifications of in compliance with the permit.”~~

Section 3. Repealer. The following sections of the Montana Code Annotated are repealed:

76-5-206. Powers and duties of department relative to obstructions.

76-5-207. Floodway obstruction removal fund.

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

Approved March 18, 2011

CHAPTER NO. 24

[HB 97]

AN ACT TRANSFERRING THE RESPONSIBILITY FOR THE SUPERVISION OF THE OFFICE OF APPELLATE DEFENDER FROM THE CHIEF PUBLIC DEFENDER TO THE PUBLIC DEFENDER COMMISSION; AMENDING SECTIONS 2-18-103, 47-1-103, 47-1-104, 47-1-105, 47-1-201, 47-1-205, AND 47-1-216, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-18-103, MCA, is amended to read:

“2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- (15) executive director of the Montana wheat and barley committee;
- (16) commissioner of banking and financial institutions;
- (17) training coordinator for county attorneys;
- (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- (19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender; *and*

(22) *chief appellate defender in the office of appellate defender.*

Section 2. Section 47-1-103, MCA, is amended to read:

“47-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) “Commission” means the public defender commission established in 2-15-1028.

(2) “Court” means the supreme court, a district court, a youth court, a justice’s court, a municipal court, or a city court.

(3) “Indigent” means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

(4) “Office” means the office of state public defender established in 47-1-201.

(5) “Public defender” means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, *including attorneys employed by or under contract with the office of appellate defender.*

(6) “Statewide public defender system”, “state system”, or “system” means the system of public defender services established pursuant to this chapter.”

Section 3. Section 47-1-104, MCA, is amended to read:

“47-1-104. Statewide system — structure and scope of services — assignment of counsel at public expense. (1) There is a statewide public defender system, which ~~must is required to~~ deliver public defender services in all courts in this state. ~~The~~ *The* system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) ~~Beginning July 1, 2006, when~~ *When* a court orders the office ~~or the office of appellate defender~~ to assign counsel, the ~~appropriate~~ office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the ~~office makes~~ *offices make* appropriate assignments in a timely manner.

(4) ~~Beginning July 1, 2006, a~~ *A* court may order ~~the an~~ office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in 50-20-212;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 4. Section 47-1-105, MCA, is amended to read:

"47-1-105. Commission — duties — report — rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

(1) (a) establish the qualifications, duties, and compensation of the chief public defender, as provided in 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; *and*

(b) *establish the qualifications, duties, and compensation of the chief appellate defender, as provided in 47-1-205, appoint a chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender;*

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, *including cases on appeal*, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender, ~~and~~ the administrative director, *and the chief appellate defender;*

(4) review and approve any proposal to create permanent staff positions;

(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission, or the chief public defender, or the *chief appellate defender*;

(c) the number of deputy public defenders and the region supervised by each;

(d) the number of public defenders employed or contracted with in the system, identified by region;

(e) the number of attorney and nonattorney staff supervised by each deputy public defender;

(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(g) the total number of persons represented by the office and the office of *appellate defender*, identified by region, court, and case type;

(h) the annual caseload and workload of each public defender and the office of *appellate defender*, identified by region, court, and case type;

(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(k) detailed expenditure data by court and case type.”

Section 5. Section 47-1-201, MCA, is amended to read:

“47-1-201. Office of state public defender — personnel — compensation — expenses — reports. (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position’s duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of *state public defender* and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

~~(ii) a chief appellate defender;~~

~~(iii)~~(ii) a chief contract manager to oversee and enforce the contracting program;

~~(iv)~~(iii) a training coordinator, appointed as provided in 47-1-210;

- (v)(iv) deputy public defenders, as provided in 47-1-215;
- (b) assistant public defenders; and
- (c) other necessary administrative and professional support staff for the office.
- (4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.
- (5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:
- (a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and
- (b) transcript fees, as provided in 3-5-604.
- (6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.
- (7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.
- (8) *The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.*

(8)(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, *including defense expenses paid for work performed by or for the office of appellate defender.*

(9)(10) (a) The office of public defender is required to report data for each fiscal year *by September 30 of the subsequent fiscal year* representing the caseload for the entire public defender system to the legislative finance committee. The report must include data for both employee and contract attorneys, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.~~

(b) The office of public defender is required to report to the legislative finance committee for each fiscal year *by September 30 of the subsequent fiscal year* on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.~~

Section 6. Section 47-1-205, MCA, is amended to read:

“47-1-205. Office of appellate defender — chief appellate defender.

(1) There is ~~within the office~~ an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) (a) ~~Beginning July 1, 2006, the chief public defender~~ *The commission shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender. The chief appellate defender is appointed by and serves at the pleasure of the commission. The commission shall establish*

compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The chief appellate defender must be an attorney licensed to practice law in the state.

(c) The position of chief appellate defender is exempt from the state classification and pay plan as provided in 2-18-103.

(3) The chief appellate defender shall:

(a) *direct, manage, and supervise all public defender services provided by the office of appellate defender, including budgeting, reporting, and related functions;*

(b) *ensure that when a court orders the office of appellate defender to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;*

(c) *ensure that appellate defender assignments comply with the provisions of 47-1-202(7) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;*

(d) *hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;*

(e) *contract for services as provided in 47-1-216 and as authorized by the chief public defender commission according to the strategic plan for the delivery of public defender services;*

(f) *keep a record of appellate defender services and expenses of the office of appellate defender office and submit records and reports to the chief public defender commission as requested through the office of state public defender;*

(g) *implement standards and procedures established by the commission and the chief public defender for the office of appellate defender;*

(h) *maintain a minimum client caseload as determined by the chief public defender commission; and*

(i) *confer with the chief public defender on budgetary issues and submit budgetary requests and the reports required by law or by the governor through the chief public defender; and*

(j) *perform all other duties assigned to the chief appellate defender by the chief public defender commission."*

Section 7. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services — rules. (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region *and that contracting for appellate defender services is done fairly and consistently statewide.*

(2) ~~Beginning July 1, 2006, the~~ *The state public defender* office and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. *The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver*

appellate defender services in the state. All contracting pursuant to this section is exempt from the Montana Procurement Act, as provided in 18-4-132.

(3) Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(4) Contracting for public defender *and appellate defender* services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

(5) The chief public defender, ~~and~~ deputy public defenders, *and the chief appellate defender* shall provide for contract oversight and enforcement to ensure compliance with established standards.

(6) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender *and appellate defender* services and for others contracted to provide nonattorney services.”

Section 8. Effective date. [This act] is effective July 1, 2011.

Approved March 18, 2011

CHAPTER NO. 25

[HB 182]

AN ACT PROVIDING AUTHORITY TO PUBLIC SCHOOLS TO FINANCE ENERGY CONSERVATION MEASURES; EXTENDING THE TERM OF AN OBLIGATION FOR A QUALIFIED ENERGY PROJECT TO 15 YEARS; AMENDING SECTIONS 20-9-421 AND 20-9-471, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-9-421, MCA, is amended to read:

“20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction. A school district ~~shall~~ *may* not issue bonds for any purpose other than that provided in 15-1-402, ~~and~~ 20-9-412, *and 20-9-471* unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue ~~such~~ *the* bonds. A school district bond election ~~shall~~ *must* be called by a resolution as prescribed under the provisions of 20-20-201 when:

(1) the trustees, of their own volition, adopt a resolution to that effect; or

(2) the trustees have received a petition ~~which that~~ asks ~~that for~~ an election to be held to consider a bond proposition and ~~which that~~ has been validated under the provisions of 20-9-425.”

Section 2. Section 20-9-471, MCA, is amended to read:

“20-9-471. Issuance of obligations — authorization — conditions. (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

- (a) the costs of vehicles and equipment;
- (b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems; *and conservation measures as defined in 90-4-1102;*
- (c) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and
- (d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, including an obligation for a qualified energy project, may not exceed ~~10~~ 15 fiscal years. For the purposes of this subsection, a “qualified energy project” means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) Except as provided in 20-9-502 and 20-9-503, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

- (a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;
- (b) the 20% square footage limitation may not be exceeded within any 5-year period; and
- (c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at a special or regular election in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(5) *The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the conservation-related cost savings under energy performance contracts as defined in 90-4-1102.*

(6) *The obligation must state clearly on its face that the obligation is not secured by a pledge of the school district’s taxing power but is payable from amounts in its general fund or other legally available funds.*

~~(5)~~(7) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(6)(8) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(7)(9) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.”

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

Approved March 18, 2011

CHAPTER NO. 26

[SB 63]

AN ACT REVISING BUSINESS ENTITY STATUTES; STANDARDIZING ADDRESS REFERENCES FOR CERTAIN BUSINESS ENTITIES; ELIMINATING CERTAIN REFERENCES TO THE BOARD OF REVIEW; MODIFYING REGISTRATION REQUIREMENTS FOR LIMITED LIABILITY PARTNERSHIPS; CONSOLIDATING REQUIREMENTS FOR REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION OF A LIMITED LIABILITY COMPANY; CLARIFYING REQUIREMENTS FOR RENEWAL OF BUSINESS NAME AND TRADEMARK REGISTRATION; AMENDING SECTIONS 30-13-203, 30-13-206, 30-13-207, 30-13-213, 30-13-217, 30-13-313, 30-16-301, 35-1-216, 35-1-1028, 35-1-1029, 35-1-1104, 35-2-213, 35-2-822, 35-2-904, 35-3-209, 35-8-202, 35-8-208, 35-8-912, 35-8-1003, 35-10-102, 35-10-701, 35-12-601, 35-12-610, AND 35-12-1302, MCA; AND REPEALING SECTION 35-8-210, MCA.

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

Section 1. Section 30-13-203, MCA, is amended to read:

“30-13-203. Application for registration of assumed business name.

A person transacting business in this state under an assumed business name shall register with the secretary of state, on forms furnished by the secretary of state ~~or by electronic means established by the board of review established in 30-16-302,~~ an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and *business mailing address*, ~~including the street name and number,~~ of the applicant;

(2) the complete ~~name of the~~ proposed assumed business name;

(3) the date of first use, in commerce, of the proposed assumed business name; and

(4) a description of business transacted under the proposed assumed name.”

Section 2. Section 30-13-206, MCA, is amended to read:

“30-13-206. Term and renewal of assumed business name registration. (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state ~~or by electronic means established by rule by the board of review established in 30-16-302,~~ the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of

record of the pending expiration by addressing a notice to the last-known address of the applicant.

(3) ~~(a) Subject to subsection (3)(b), if~~ *If* the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration.

~~(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership."~~

Section 3. Section 30-13-207, MCA, is amended to read:

"30-13-207. Application for renewal of assumed business name. An application for renewal of registration of an assumed business name must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

- (1) the complete assumed business name;
- (2) the name and *business mailing* address, ~~including street name and number, if any,~~ of the applicant; and
- (3) a description of business transacted."

Section 4. Section 30-13-213, MCA, is amended to read:

"30-13-213. Voluntary cancellation of registration of assumed business name. (1) When the registrant of record of a registered assumed business name wishes to cancel the registration, the registrant shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of an assumed business name, which must include but not be limited to the following information:

- (a) the complete ~~name of the~~ registered assumed business name to be canceled; and
- (b) the name and *business mailing* address, ~~including the street name and number, if any,~~ of the registrant of record.
- (2) If the secretary of state finds the affidavit complies with the provisions of this section, the secretary of state shall file it and mail a letter acknowledging cancellation of the filing to the registrant of record."

Section 5. Section 30-13-217, MCA, is amended to read:

"30-13-217. Fees and charges to be established and collected by secretary of state. (1) The secretary of state shall establish, charge, collect, and deposit, in accordance with 2-15-405:

- (a) fees for filing documents and issuing certificates pursuant to this part; *and*
- (b) miscellaneous charges for other services provided by the secretary of state pursuant to this part; *and*
- ~~(c) a license fee from each limited liability partnership at the time of registration under 30-13-203 and at the time of each renewal of registration under 30-13-206 through 30-13-208.~~

(2) Fees and charges may be paid by credit card and may be discounted for payment processing charges paid by the secretary of state to a third party."

Section 6. Section 30-13-313, MCA, is amended to read:

"30-13-313. Duration and renewal. (1) Registration of a mark under this part is effective for a term of 5 years from the date of registration, and upon

application filed within 6 months prior to the expiration of that term, in a manner complying with the requirements of the secretary of state, the registration may be renewed for another 5 years.

(2) The application for renewal of mark registration must be accompanied by a filing fee as provided for in 30-13-320.

(3) A registration may be renewed for successive periods of 5 years as provided in subsection (1).

(4) Any registration in force on July 1, 2003, continues in full force and effect for the unexpired term of the registration and may be renewed by filing an application for renewal with the secretary of state complying with the requirements of the secretary of state and paying the renewal fee within 6 months prior to the expiration of the registration.

(5) All applications for renewal under this part must include a verified statement that the mark has been and is still in use, ~~and include~~ a specimen showing actual use of the mark on or in connection with the goods or services, *and the following information:*

(a) *the original identification number assigned by the secretary of state;*

(b) *the name subscribed for the mark;*

(c) *the name and business mailing address of the person claiming ownership of the mark;*

(d) *if a corporation, the state of incorporation or, if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state; and*

(e) *the class of goods or services and a description of the goods or services on or in connection with which the mark is used."*

Section 7. Section 30-16-301, MCA, is amended to read:

"30-16-301. Business registration and licensing plan — administration. (1) The provisions of 16-11-120, 16-11-122, 30-12-203, ~~30-13-203, 30-13-206, 30-13-210, 30-13-217,~~ 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, ~~30-13-203, 30-13-206, 30-13-210, 30-13-217,~~ 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

(a) an anniversary date for license renewal that is set by the board of review;

(b) an electronic means of verifying the information required in the license application; and

(c) payment of fees required for licensure by credit card, debit card, or other commercially acceptable means as provided in 15-1-231.

(2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review."

Section 8. Section 35-1-216, MCA, is amended to read:

"35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

- (b) the number of shares the corporation is authorized to issue;
 - (c) (i) the information required by 35-7-105(1); and
 - (ii) the name of its initial registered agent; and
 - (d) the name and *business mailing* address of each incorporator.
- (2) The articles of incorporation may set forth:
- (a) the names and complete street addresses of the individuals who are to serve as the initial directors;
 - (b) provisions consistent with law regarding:
 - (i) the purpose or purposes for which the corporation is organized;
 - (ii) managing the business and regulating the affairs of the corporation;
 - (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
 - (iv) a par value for authorized shares or classes of shares; and
 - (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
 - (c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
 - (d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:
 - (i) the amount of a financial benefit received by a director to which the director is not entitled;
 - (ii) an intentional infliction of harm on the corporation or the shareholders;
 - (iii) a violation of 35-1-713; or
 - (iv) an intentional violation of criminal law.
- (3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter.”

Section 9. Section 35-1-1028, MCA, is amended to read:

“35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

- (a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;
- (b) the name of the state or country under whose law it is incorporated;
- (c) its date of incorporation and period of duration;
- (d) the ~~street~~ *business mailing* address of its principal office;
- (e) the information required by 35-7-105(1);
- (f) the names and usual business addresses of its current directors and officers; and
- (g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.”

Section 10. Section 35-1-1029, MCA, is amended to read:

“35-1-1029. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if *the corporation* ~~it~~ changes:

- (a) its corporate name;
- (b) the period of its duration;
- (c) any of the information required by 35-7-105(1); or
- (d) the state or country of its incorporation; or

(e) *other corporate information that is recorded in its state or country of incorporation but not listed in subsections (1)(a) through (1)(d).*

(2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.”

Section 11. Section 35-1-1104, MCA, is amended to read:

“35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report, executed as provided in 35-1-217, that sets forth:

- (a) the name of the corporation and the jurisdiction under whose law it is incorporated;
- (b) the information required by 35-7-105(1);
- (c) the *business mailing* address of its principal office, wherever located;
- (d) the names *and business mailing addresses* of its principal officers, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead; and
- (e) the names *and business mailing addresses* of its directors, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.”

Section 12. Section 35-2-213, MCA, is amended to read:

“35-2-213. Articles of incorporation. (1) The articles of incorporation must set forth:

- (a) a corporate name for the corporation that satisfies the requirements of 35-2-305;
- (b) a statement that:
 - (i) the corporation is a public benefit corporation;
 - (ii) the corporation is a mutual benefit corporation; or
 - (iii) the corporation is a religious corporation;

- (c) the information required by 35-7-105(1);
 - (d) the name and *business mailing* address of each incorporator;
 - (e) whether or not the corporation will have members; and
 - (f) provisions consistent with law regarding the distribution of assets on dissolution.
- (2) The articles of incorporation may set forth:
- (a) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
 - (b) the names and *business mailing* addresses of the individuals who are to serve as the initial directors;
 - (c) provisions consistent with law regarding:
 - (i) managing and regulating the affairs of the corporation;
 - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members; and
 - (iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
 - (d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
 - (e) provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of a director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director:
 - (i) for a breach of the director's duty of loyalty to the corporation or its members;
 - (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - (iii) for a transaction from which a director derived an improper personal economic benefit; or
 - (iv) under 35-2-418, 35-2-435, or 35-2-436.
- (3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.
- (4) Each incorporator and director named in the articles shall sign the articles.
- (5) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter."

Section 13. Section 35-2-822, MCA, is amended to read:

"35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

- (a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;
- (b) the name of the state or country under whose law it is incorporated;
- (c) the date of incorporation and period of duration;
- (d) the ~~street address and, if different, the~~ *business mailing* address of its principal office;

- (e) the information required by 35-7-105(1);
- (f) the names and ~~usual business or home~~ *mailing* addresses of its current directors and officers;
- (g) whether the foreign corporation has members;
- (h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and
- (i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.”

Section 14. Section 35-2-904, MCA, is amended to read:

“35-2-904. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report on a form prescribed and furnished by the secretary of state that sets forth:

- (a) the name of the corporation and the jurisdiction under whose law it is incorporated;
- (b) the information required by 35-7-105(1);
- (c) the *business mailing* address of its principal office, wherever located;
- (d) the names and ~~business or residence~~ *mailing* addresses of its directors and principal officers;
- (e) a brief description of the nature of its activities; and
- (f) whether or not it has members.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.”

Section 15. Section 35-3-209, MCA, is amended to read:

“35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act an annual report on forms or in a computerized format prescribed by the secretary of state, setting forth:

- (a) the name of the corporation and the name of the present incumbent chief corporate officer;
- (b) the *business mailing* address of the principal office of the corporation, wherever located, and the information specified by 35-7-105(1);

(c) the names and ~~respective~~ *business mailing* addresses of the present members of the board of advisers or consultants of the corporation.

(2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by the chief corporate officer.”

Section 16. Section 35-8-202, MCA, is amended to read:

“35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the complete ~~street~~ *business mailing* address of its principal office, wherever located;

(d) the information required by 35-7-105(1);

(e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and ~~street~~ *business mailing* addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and ~~street~~ *business mailing* addresses of the initial members;

(f) whether one or more members of the company are to be liable for the limited liability company’s debts and obligations under 35-8-304(3);

(g) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(h) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member’s transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member’s transferee, that reasonably relies on the articles of organization to that person’s detriment.”

Section 17. Section 35-8-208, MCA, is amended to read:

“35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the jurisdiction under whose law it is organized;

(b) the information required by 35-7-105(1);

(c) the *business mailing* address of its principal office, wherever located;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and ~~street~~ *business mailing* addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect *and the names and business mailing addresses of the members*;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to the limited liability company for correction.

(5) The annual report must be executed by at least one member of the limited liability company or by the authorized agent.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.”

Section 18. Section 35-8-912, MCA, is amended to read:

“35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved *under the provisions of 35-8-209* may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution *to restore its right to carry on business in this state and to exercise all its privileges and immunities.* ~~The applicant shall file an official application. The application must~~ *A limited liability company applying for reinstatement shall submit to the secretary of state an official application, executed by a person who was a member or manager at the time of dissolution, setting forth:*

~~(a) recite the name of the company and the effective date of its administrative dissolution;~~

~~(b) state that the ground for dissolution either did not exist or has been eliminated;~~

~~(c) state that the company’s name satisfies the requirements of 35-8-103;~~

~~(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and~~

~~(e) include all annual reports not yet filed with the secretary of state.~~

~~(a) the name and business mailing address of the limited liability company;~~

~~(b) a statement that the assets of the limited liability company have not been liquidated;~~

~~(c) a statement that a majority of its members have authorized the application for reinstatement; and~~

~~(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.~~

~~(2) The limited liability company shall submit with its application for reinstatement:~~

~~(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and~~

~~(b) all annual reports not yet filed with the secretary of state.~~

~~(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.~~

~~(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.~~

~~(3) When all requirements of subsections (1) and (2) are met and the secretary of state reinstates the limited liability company, the secretary of state shall:~~

~~(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;~~

~~(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and~~

~~(c) upon demand and receipt of the specified fee, issue to the limited liability company one or more certified copies of the certificate of reinstatement.~~

~~(4) The secretary of state may not order a reinstatement if 5 years have elapsed since the date of dissolution.~~

~~(5) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was administratively dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization."~~

Section 19. Section 35-8-1003, MCA, is amended to read:

"35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b) the name of the jurisdiction under whose law it is organized;

(c) its date of organization and period of duration;

(d) the ~~street~~ *business mailing* address of its principal office, wherever located;

(e) the information required by 35-7-105(1); and

(f) the names and usual business mailing addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the jurisdiction under whose law the foreign limited liability company is organized.”

Section 20. Section 35-10-102, MCA, is amended to read:

“35-10-102. Definitions. In this chapter, the following definitions apply:

(1) “Business” includes every trade, occupation, or profession.

(2) “Debtor in bankruptcy” means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.

(4) “Limited liability partnership” means a partnership registered under 35-10-701 and includes both domestic and foreign limited liability partnerships.

(5) (a) “Partnership” means an association of two or more persons to carry on as co-owners a business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

(b) The term includes but is not limited to a limited liability partnership for all purposes of the laws of this state and all licensing laws, whether for professionals or otherwise.

(6) “Partnership agreement” means an agreement, written or oral, among the partners concerning the partnership.

(7) “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(8) “Person” means:

(a) an individual;

(b) a corporation;

(c) a business trust;

(d) an estate;

(e) a trust;

(f) a partnership;

(g) an association;

(h) a joint venture;

(i) a government;

(j) a governmental subdivision, agency, or instrumentality; or

(k) any other legal or commercial entity.

(9) “Property” means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(10) “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.

(11) "Statement" means a statement of partnership authority under 35-10-310, a statement of denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under 35-10-627, a statement of merger under 35-10-643, an application for registration of assumed business name or a renewal of registration ~~under 35-10-701~~, or an amendment, cancellation, or withdrawal of the foregoing.

(12) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance."

Section 21. Section 35-10-701, MCA, is amended to read:

"35-10-701. Registration of limited liability partnerships. (1) To become a limited liability partnership, a partnership shall file with the secretary of state an application for registration ~~of an assumed business name~~, on a form furnished by the secretary of state, that indicates an intention to register as a limited liability partnership under this section. ~~The registration of a limited liability partnership under this section is subject to all of the terms and conditions otherwise applicable to the registration of an assumed business name pursuant to Title 30, chapter 13, part 2.~~

(2) The application for registration ~~of an assumed business name~~ *a limited liability partnership* must be executed by ~~one~~ *two* or more partners authorized to execute the application and registration *and must contain the following information:*

(a) *the name and business mailing address of the limited liability partnership;*

(b) *the date of first use, in commerce, of the proposed limited liability partnership;*

(c) *a description of business transacted by the limited liability partnership; and*

(d) *the name and business mailing address of each of the partners.*

(3) The secretary of state shall register as a limited liability partnership any partnership that substantially complies with ~~Title 30, chapter 13, part 2, and~~ this section.

(4) A partnership's registration under this section is effective when the secretary of state files the partnership's application for registration ~~of an assumed business name~~ under subsection (1) and remains in effect until it is canceled by the secretary of state ~~pursuant to Title 30, chapter 13, part 2.~~

(5) The fact that an application for registration ~~of an assumed business name of a limited liability partnership~~ under this section or any renewals ~~of the assumed business name of that partnership~~ *is are* on file with the office of the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the application.

(6) The secretary of state shall provide necessary forms for the registration of a limited liability partnership under ~~subsection~~ *subsections (1) and (2)* or any renewals of registration."

Section 22. Term and renewal of limited liability partnership registration. (1) Registration of a limited liability partnership is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of the registration of a limited liability partnership, the secretary of state shall notify the limited

liability partnership of the pending expiration by mailing a notice to the business mailing address of the limited liability partnership.

(3) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership.

Section 23. Application for renewal of limited liability partnership registration. An application for renewal of registration of a limited liability partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

- (1) the complete name and business mailing address of the limited liability partnership;
- (2) the name and business mailing address of each partner; and
- (3) a description of business being transacted.

Section 24. Amendment to registration of limited liability partnership. An amendment to registration of a limited liability partnership must be filed with the secretary of state within 1 year after any one of the following events occurs:

- (1) there is a change in the name or identity of the partners transacting or having interest in the limited liability partnership;
- (2) there is a change in the description of the business transacted;
- (3) a partner having an interest in the limited liability partnership withdraws from the business or dies; or
- (4) two or more partners apply to change the name of a registered limited liability partnership.

Section 25. Filing amendment to registration of limited liability partnership — issuance of certificate. (1) An application for amended registration of a limited liability partnership must be filed with the secretary of state and must include:

- (a) the complete limited liability partnership name prior to adoption of the amendment;
- (b) the complete new limited liability partnership name, if applicable;
- (c) the business mailing address of the limited liability partnership;
- (d) if the name of any partner to a limited liability partnership is to be changed, the new name of the partner;
- (e) if a partner withdraws or dies, a statement that the person has withdrawn or died;
- (f) a statement that the amended registration of limited liability partnership supersedes the original registration and all amendments to the original registration; and
- (g) all other information determined by the secretary of state to be necessary to support an application.

(2) If the secretary of state finds that the application for amended registration of a limited liability partnership complies with this part and that all applicable fees have been paid, the secretary of state shall:

- (a) endorse on the application for amendment the word “filed” and the date on which the application for amendment was filed;
- (b) file the original application for amendment in the secretary of state’s office; and

(c) issue to the limited liability partnership a certificate of amendment.

(3) If the limited liability partnership fails to comply with the requirements of this section, the secretary of state shall cancel the registration.

Section 26. Reservation of proposed limited liability partnership name. (1) An authorized person who has not commenced business but intends to commence business may reserve a limited liability partnership name for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of a limited liability partnership name.

(2) The proposed limited liability partnership name may not be the same as or indistinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state.

(3) An applicant for a proposed limited liability partnership name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

Section 27. Filing application for reservation of limited liability partnership name — issuance of certificate. (1) A person seeking to reserve a limited liability partnership name shall submit a completed application and all applicable fees to the secretary of state.

(2) The application for a proposed limited liability partnership name must include but is not limited to the following information:

(a) the complete limited liability partnership name to be reserved;

(b) the name and business mailing address of the limited liability partnership;

(c) the date the limited liability partnership intends to commence business; and

(d) a description of business that the limited liability partnership intends to transact.

(3) If the secretary of state finds the application complies with the provisions of this part, the secretary of state shall:

(a) endorse on the application the word “filed” and the date on which the application was filed;

(b) file the application in the secretary of state’s office; and

(c) issue a certificate of reservation to the person who submits the application.

Section 28. Voluntary cancellation of registration of limited liability partnership. (1) When a limited liability partnership wishes to cancel its registration, two or more partners shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of a limited liability partnership, which must include but is not limited to the following information:

(a) the complete name of the registered limited liability partnership to be canceled;

(b) the business mailing address of the limited liability partnership; and

(c) the names and business mailing addresses of the partners.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, the secretary of state shall file it and mail a letter acknowledging cancellation of the registration to the limited liability partnership.

Section 29. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties for false swearing, by each person executing the document that the statements in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under this part.

Section 30. Evidentiary effect of certificates and documents of secretary of state. All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in the office of the secretary of state in accordance with the provisions of this part when certified by the secretary of state must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated in the certificates or documents.

Section 31. Effect of transacting business without certificate. A person conducting or transacting business in this state as a limited liability partnership without an effective certificate of registration of a limited liability partnership name or a person having an interest in the limited liability partnership name may not maintain any suit or action in the courts of this state under the name.

Section 32. Section 35-12-601, MCA, is amended to read:

“35-12-601. Certificate of limited partnership. (1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

- (a) the name of the limited partnership;
- (b) the information required by 35-7-105(1);
- (c) the name and the complete business street mailing address of each general partner; and
- (d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section.”

Section 33. Section 35-12-610, MCA, is amended to read:

“35-12-610. Term and renewal of certification. (1) Certification of a *domestic or foreign* limited partnership is effective for a term of 5 years from the date of filing or renewal of certification *or the date of issuance of a certificate under 35-12-1303*. Upon application for renewal of certification on forms furnished by the secretary of state, the certification may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary of state shall notify the listed general partner or partners or specified agent of the pending expiration by addressing a notice to the last-known address of the general partner or partners or specified agent.

(3) If the general partner or partners or specified agent ~~fail~~ fails to file an application for renewal with the secretary of state within a 90-day period prior

to the expiration date of the certification, the secretary of state shall cancel the certification.

(4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in 35-12-610 through 35-12-613.”

Section 34. Application for renewal of foreign limited partnership certification — requirement for appointed registered agent. (1) The application for renewal of certification of a foreign limited partnership must be executed by the general partners and delivered to the secretary of state. The application must include the following information:

(a) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(b) the name and address of the registered agent appointed by the foreign limited partnership for the service of process on the foreign limited partnership; and

(c) the name and business mailing address of each general partner.

(2) A registered agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state.

Section 35. Section 35-12-1302, MCA, is amended to read:

“35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(2) the state in which the foreign limited partnership was formed and the date of the foreign limited partnership’s formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint. An agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state.

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed, the agent’s authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(5) the *business mailing* address of the office required to be maintained in the state of the foreign limited partnership’s organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business *mailing* address of each general partner; and

(7) the *business mailing* address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those

records until the foreign limited partnership's registration in this state is canceled or withdrawn."

Section 36. Repealer. The following section of the Montana Code Annotated is repealed:

35-8-210. Reinstatement of dissolved limited liability company.

Section 37. Codification instruction. (1) [Sections 22 through 31] are intended to be codified as an integral part of Title 35, chapter 10, part 7, and the provisions of Title 35, chapter 10, part 7, apply to [sections 22 through 31].

(2) [Section 34] is intended to be codified as an integral part of Title 35, chapter 12, part 13, and the provisions of Title 35, chapter 12, part 13, apply to [section 34].

Approved March 18, 2011

CHAPTER NO. 27

[SB 78]

AN ACT REVISING THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT AND INCORPORATING MODEL ACT LANGUAGE; CLARIFYING APPLICABILITY TO IMPAIRED AND INSOLVENT INSURERS; REVISING THE POWERS AND DUTIES OF THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION; PROVIDING 60 DAYS FOR THE COMMISSIONER TO DISAPPROVE THE ASSOCIATION'S PLAN OF OPERATION OR AMENDMENTS TO THE PLAN; ELIMINATING CERTAIN REPORTING REQUIREMENTS; CHANGING THE STAY OF PROCEEDINGS AGAINST AN INSOLVENT INSURER TO 180 DAYS FROM 60 DAYS; CLARIFYING COVERAGE LIMITS AND INCREASING CERTAIN LIMITS; ALLOWING APPLICATION TO A RECEIVERSHIP COURT FOR DISBURSEMENT OF AN INSOLVENT INSURER'S ASSETS; PROHIBITING DISTRIBUTIONS TO STOCKHOLDERS OR OWNERS OF IMPAIRED OR INSOLVENT INSURERS UNTIL VALID CLAIMS ARE PAID WITH INTEREST; REQUIRING AT LEAST 180 DAYS' NOTICE OF AUTHORIZED ASSESSMENTS AND REVISING THE ASSESSMENT PROCESS; INCORPORATING EXISTING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-10-201, 33-10-202, 33-10-205, 33-10-210, 33-10-216, 33-10-217, 33-10-222, 33-10-223, 33-10-224, 33-10-225, 33-10-226, AND 33-10-227, MCA; REPEALING SECTIONS 33-10-219, 33-10-220, AND 33-10-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE.

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

Section 1. Section 33-10-201, MCA, is amended to read:

"33-10-201. Short title, purpose, scope, and construction. (1) This part may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments or insolvencies.

~~(4) This part applies to direct, nongroup life, health, and annuity policies and contracts and their supplemental contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, lottery annuities issued in connection with government lotteries, and any immediate or deferred annuity contracts.~~

~~(5) This part provides coverage for policies and contracts specified in subsection (4):~~

~~(a) to persons who are owners of or certificate holders under covered policies or contracts, other than unallocated annuity contracts and structured settlement annuities that are provided for in subsections (6) and (7), if the persons:~~

~~(i) are residents; or~~

~~(ii) are not residents, but only under all of the following conditions:~~

~~(A) the insurers that issued the policies are domiciled in this state;~~

~~(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;~~

~~(C) the state has an association similar to the association created under this part; and~~

~~(D) the persons are not eligible for coverage by that association; and~~

~~(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).~~

~~(6) With respect to unallocated annuity contracts, this part provides coverage to:~~

~~(a) persons who are the owners of unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and~~

~~(b) persons who are owners of unallocated annuity contracts issued in connection with government lotteries if the owners are residents.~~

~~(7) (a) With respect to structured settlement annuities, this part provides coverage to a person who is:~~

~~(i) a payee under a structured settlement annuity;~~

~~(ii) a beneficiary of a payee if the payee is deceased; or~~

~~(iii) a resident payee, regardless of where the contract owner resides.~~

~~(b) This part also applies to a payee of a structured settlement annuity contract who is not a resident if:~~

~~(i) the contract owner of the structured settlement annuity is a resident, the insurer that issued the structured settlement annuity is domiciled in this state,~~

or the state in which the contract owner resides has an association similar to the association created by this part; and

(ii) the payee, beneficiary, or contract owner is not eligible for coverage by the association in the state in which the payee or contract owner resides.

(8) This part does not provide coverage to:

(a) a person who is a payee or a beneficiary of a contract owner who is the resident of another state if the payee or beneficiary is afforded any coverage by the association of another state; or

(b) a person described in subsection (5) if the person is afforded any coverage by the association of another state.

(9) (a) This part is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this part is provided coverage under the laws of any other state, the person may not be provided coverage under this part.

(b) In determining the application of this subsection (9) to situations in which a person, such as an owner, payee, beneficiary, or assignee, could be covered by the associations of more than one state, this part must be construed in conjunction with other state laws to result in coverage by only one association.

(10) This part does not provide coverage for:

(a) policies or contracts or any part of the policies or contracts not guaranteed by the member insurer or under which the risk is borne by the policyowner;

(b) a policy or contract or part of the policy or contract assumed by the impaired member insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(c) any portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;

(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees, members, or others to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

~~(e) any portion of a policy or contract to the extent that it provides dividends, experience rating credits, or voting rights or provides that any fees or allowances be paid to any person, including the policyowner or contract owner, in connection with the service to or administration of the policy or contract;~~

~~(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;~~

~~(g) any unallocated annuity contract issued to or in connection with an employee benefit plan that is protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation is liable to make any payments with respect to the employee benefit plan;~~

~~(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery;~~

~~(i) an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the policyowner or contract owner, including without limitation:~~

~~(i) claims based on marketing materials;~~

~~(ii) claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable requirements for filing policy forms or for policy approval;~~

~~(iii) misrepresentations of or regarding policy benefits;~~

~~(iv) extracontractual claims; or~~

~~(v) a claim for penalties or consequential or incidental damages;~~

~~(j) a contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; or~~

~~(k) a portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policyowner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this part. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or changes in value determined by using the procedures defined in the policy or contract must be credited as if the contractual date of crediting interest or changes in value was the date of impairment or insolvency and the interest or changes in value are not subject to forfeiture.~~

~~(11)(4) This part must be liberally construed to effect the purpose under subsections (2) and (3), which constitute an aid and guide to interpretation.~~

~~(12)(5) This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability."~~

Section 2. Section 33-10-202, MCA, is amended to read:

“33-10-202. Definitions. As used in this part, the following definitions apply:

(1) “Account” means either of the two accounts created under 33-10-203.

(2) “Association” means the Montana life and health insurance guaranty association created under 33-10-203.

(3) “*Authorized assessment*” or “*authorized*” when used in the context of assessments means a specified amount of money authorized for collection from member insurers by a resolution of the board of directors, established in 33-10-204. The authorized assessment may be called for immediately or in the future. The assessment is authorized when the board passes the resolution.

(3)(4) “Benefit plan” means a benefit plan for a specific employee, union, or association of natural persons benefit plan.

(5) “*Called*”, when used in the context of assessments, means that the association has issued a notice to member insurers requiring that an authorized assessment be paid within the timeframe set forth within the notice. An authorized assessment becomes a called assessment when the association mails the notice to member insurers.

(4)(6) “Contractual obligation” means any obligation under covered policies any of the following for which coverage is provided in this part:

(a) a policy or contract;

(b) a certificate under a group policy or contract; or

(c) a portion of a policy or contract or a portion of a certificate.

(5)(7) “Covered policy” means any policy or contract or portion of a policy or contract for which coverage is provided within the scope of this part under 33-10-201(4) through (10).

(8) “*Extracontractual claims*” includes but is not limited to those claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney fees and costs.

(6)(9) “Impaired insurer” means a member insurer that is not an insolvent insurer and that is placed under an order of rehabilitation or supervision by a court of competent jurisdiction.

(7)(10) “Insolvent insurer” means a member insurer that is placed under an order of liquidation by a court of competent jurisdiction upon a finding of insolvency.

(8)(11)(a) “Member insurer” means an insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under 33-10-201 and 33-10-224 this part and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

(i) a health service corporation;

(ii) a hospital or medical service organization, whether for profit or not for profit;

(ii)(iii) a health maintenance organization;

(iii)(iv) a fraternal benefit society;

(iv)(v) a mandatory state pooling plan;

(v)(vi) a mutual assessment company or any entity other person that operates on an assessment basis;

(vi)(vii) an insurance exchange;

~~(vii)~~(viii) an organization that has a certificate or license limited to the issuance of charitable gift annuities; or

~~(viii)~~(ix) an entity similar to any of the entities listed in subsections ~~(8)(b)(i)~~ (11)(b)(i) through ~~(8)(b)(vii)~~ (11)(b)(viii).

~~(9)~~(12) “Moody’s corporate bond yield average” means the monthly average corporates as published by Moody’s investors service, inc., or its successor.

~~(10)~~(13) (a) “Owner”, “contract owner”, and “policyowner” mean the person who is identified as the legal owner under the terms of a policy or contract or who is vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and who is properly recorded as the owner on the books of the insurer.

(b) *The terms do not include a person with a mere beneficial interest in a policy or a contract.*

~~(11)~~(14) “Person” means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

~~(12)~~(15) “Plan sponsor” means:

(a) the employer in the case of a benefit plan established or maintained by a single employer;

(b) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(c) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

~~(13)~~(16) (a) “Premiums” means the amount or consideration received on covered policies or contracts less return premiums, considerations, and deposits, and less dividends and experience credits.

(b) The term does not include:

(i) amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided pursuant to ~~33-10-201(10)~~ *this part*, except that an assessable premium may not be reduced based on ~~33-10-201(10)(e)~~ *33-10-224(2)(b)* relating to interest limitations and ~~33-10-224(3)(b)~~ relating to one individual, one participant, and one contract owner;

(ii) premiums in excess of \$5 million on an unallocated annuity contract not issued under a governmental retirement benefit plan or the plan’s trustee established under section 401, 403(b), or 457 of the Internal Revenue Code; or

(iii) premiums in excess of \$5 million with respect to multiple nongroup policies of life insurance owned by one owner, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, *regardless of the number of policies or contracts held by the owner.*

~~(14)~~(17) “Principal place of business” ~~of a plan sponsor~~ means:

(a) *in the case of a plan sponsor*, the state in which more than 50% of the participants in the benefit plan are employed;

~~(b) with respect to a plan sponsor as defined in 33-10-202(12)(c), the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or~~

maintain the benefit plan, or, in lieu of specific or clear designation of a principal place of business, the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question; or

(e)(b) if 50% of the participants of a benefit plan are not employed in a single state and for a person other than an individual, the single state in which the individuals who establish policies for the direction, control, and coordination of the operations of the plan sponsor entity as a whole primarily exercise that function, as determined by the association in its reasonable judgment by considering the following factors:

(i) the state in which the primary executive and administrative headquarters of the plan sponsor is located;

(ii) the state in which the principal office of the chief executive officer of the plan sponsor is located;

(iii) the state in which the board of directors or similar governing person or persons of the plan sponsor conduct its meetings;

(iv) the state in which the executive or management committee of the board of directors or similar governing person or persons of the plan sponsor conduct the majority of its their meetings;

(v) the state from which the management of the overall operations of the plan sponsor is directed; and

(vi) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors; or

(c) with respect to a plan sponsor defined in subsection (15)(c), the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of specific or clear designation of a principal place of business, is the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

(15)(18) "Receivership court" means the court in the insolvent or impaired insurer's state that has jurisdiction over the supervision, rehabilitation, or liquidation of the insurer.

(16)(19) "Resident" means a person to whom a contractual obligation is owed and who resides in this state at the time that the impairment is determined and to whom contractual obligations are owed on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one state, and in the case of a person other than an individual, the person is a resident of the state where its principal place of business is located. Citizens of the United States who are either residents of foreign countries or residents of the possessions, territories, or protectorates of the United States and who do not have an association similar to the association created by this part must be considered residents of the state of domicile of the insurer that issued the policies or contracts.

(20) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, or a United States possession, territory, or protectorate.

(17)(21) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(18)(22) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or a life, health, or annuity contract.

(19)(23) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 3. Section 33-10-205, MCA, is amended to read:

"33-10-205. General powers Powers and duties of association — standing. (1) *If a member insurer is an impaired insurer, the association, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner, may:*

(a) *guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; and*

(b) *provide any money, pledges, loans, notes, guarantees, or other means to effectuate this section and ensure payment of the contractual obligations of the impaired insurer pending action under this section.*

(2) *If a member insurer is an insolvent insurer, the association, in its discretion, shall do one or more of the following:*

(a) (i) *guarantee, assume, or reinsure the policies or contracts of the insolvent insurer or cause the policies or contracts to be guaranteed, assumed, or reinsured or ensure payment of the contractual obligations of the insolvent insurer; and*

(ii) *provide money, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties;*

(b) *provide coverage and benefits with respect to a covered policy or contract for life or health insurance or annuities by:*

(i) *ensuring, for payment of identical premiums, payment of identical benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for claims incurred:*

(A) *for group policies or contracts by not later than the earlier of the next renewal date, as specified in the policy or contract, or 45 days; or*

(B) *for nongroup policies, contracts, or annuities by the earlier of the next renewal date, if any, as specified in the policy or contract, or 1 year;*

(ii) *ensuring payment under subsection (2)(b)(i) not less than 30 days from the date on which the association becomes obligated with respect to the policies or contracts;*

(iii) *making diligent efforts to provide all known insureds and annuitants for nongroup policies and contracts or group policyowners with respect to group policies 30 days' notice of termination; and*

(iv) (A) *making available substitute coverage on an individual basis, with respect to nongroup life and health insurance policies and annuities covered by the association, to each known insured or annuitant or owner if other than the insured or annuitant and to an individual formerly insured or formerly an annuitant under a group policy if that individual is not eligible for replacement group coverage. This subsection (2)(b)(iv)(A) must be applied in accordance with the provisions of subsection (2)(b)(iv)(B), as applicable, if the insureds or annuitants had a right under law or if the terminated policy or annuity contained provisions to convert coverage to individual coverage or to continue an*

individual policy or annuity in force until a specified age or a specified time, during which the insurer had no right to unilaterally make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(B) providing the substitute coverage required under subsection (2)(b)(iv)(A) either by issuing an alternative policy as provided in subsection (2)(b)(iv)(C) or reissuing the terminated coverage, as provided in subsection (2)(b)(iv)(D). Any reissued or alternative policy must be offered without requiring evidence of insurability and may not require a waiting period or exclusion that would not have applied under the terminated policy. The association may reinsure any reissued or alternative policy.

(C) submitting alternative policies adopted by the association to the commissioner or the receivership court for approval. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency. Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured. The premium may not reflect any changes in the health of the insured after the original policy was last underwritten. Alternative policies issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(D) setting a premium at a premium different from that charged under the terminated policy if the association elects to reissue terminated coverage. The association shall set the premium in accordance with the amount of insurance provided and the age and class of risk. The premium is subject to approval by the commissioner. A premium may also be set by a court of competent jurisdiction.

(c) cease any of its obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy on the date the coverage or policy is replaced by another similar policy by the policyowner, the insured, or the association; or

(d) ensure the payment or crediting of a rate of interest consistent with 33-10-224(2)(b)(iii) when proceeding under this section with respect to a policy or contract carrying guaranteed minimum interest rates.

(3) Except for claims incurred or any net cash surrender value that may be due in accordance with the provisions of this part, the association's obligation under the policy or contract terminates within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage for nonpayment of premiums.

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association. The association is liable only for unearned premiums due to policyowners or contract owners arising after the entry of the order of liquidation.

(5) If the association fails to act within a reasonable period of time, the commissioner has the powers and duties of the association under this part with respect to a domestic, foreign, or alien insolvent insurer.

(6) In carrying out its duties under subsections (1) through (4), the association may, subject to approval by a court of competent jurisdiction, impose:

(a) *permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement if the association finds that:*

(i) *the amounts that can be assessed under this part are less than the amounts needed to ensure full and prompt performance of the association's duties under this part; or*

(ii) *the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of permanent policy or contract liens to be in the public interest; or*

(b) (i) *temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with policies or contracts. This subsection (6)(b)(i) also allows temporary moratoriums or liens on any contractual provisions for deferral of cash or policy loan value.*

(ii) *If the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights for the period of the moratorium or moratorium charge imposed by the receivership court. This subsection (6)(b)(ii) does not apply to claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.*

(7) *The association is not liable under this part for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides protection by statute or regulation for residents of this state if that protection is substantially similar to that provided by this part for residents of other states.*

(8) *In carrying out its duties under this section, the association may, subject to the approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed for calculating returns or changes in value. The alternative policy or contract issued under this subsection (8):*

(a) *must provide in lieu of the index or other external reference in the original policy or contract:*

(i) *a fixed interest rate;*

(ii) *payment of dividends within minimum guarantees; or*

(iii) *a different method for calculating interest or changes in value;*

(b) *may not contain a requirement for evidence of insurability, a waiting period, or other exclusion that would not have applied under the replaced policy or contract; and*

(c) *must be substantially similar to the replaced policy or contract in all other material terms.*

(9) *In addition to other rights provided by law, the association may:*

(a) *enter into contracts that are necessary or proper to carry out the provisions and purposes of this part;*

(b) *sue or be sued, including taking any legal actions necessary or proper for recovery to recover of any unpaid assessments under 33-10-228 and to settle claims or potential claims against it;*

(c) *borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default must be legal investments for domestic insurers and may be carried as admitted assets.*

(d) employ or retain persons who are necessary to handle the financial transactions of the association and to perform other functions that become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, supervisor, or ancillary receiver to carry out the powers and duties of the association;

(f) take legal action that may be necessary *or appropriate* to avoid *or recover* payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but the association may not ~~in any case~~ issue insurance policies or annuity contracts other than those issued to perform ~~the contractual~~ *its* obligations of the ~~impaired or insolvent insurer~~ *under this part*;

(h) *organize itself as a corporation or in any other legal form permitted by the laws of the state*;

~~(h)~~(i) request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this part with respect to the person. The person shall promptly comply with the request.

~~(i)~~(j) take other necessary or appropriate action to discharge its duties and obligations under this part or to exercise its powers under this part.

~~(2)~~(10) The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, liquidation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

~~(3)~~(11) The association has standing to appear or intervene before any court *or agency* in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this part or before any court with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. The association's standing extends to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring, modifying, or guaranteeing the covered policies *or contracts* of the impaired or insolvent insurer and the determination of the covered policies ~~and contractual obligations~~ *or contracts*. The association ~~shall also have~~ *has* the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or before a court with jurisdiction over any person or property against ~~whom~~ *which* the association may have rights through subrogation or otherwise.

(12) *The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.*

~~(4)~~(13) The board of directors of the association may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this part in an economical and efficient manner.

~~(5)~~(14) When the association has arranged or offered to provide the benefits of this part to a covered person under a plan or arrangement that fulfills the association's obligations under this part, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(6)(15) Venue in a suit against the association arising under this part is in the first judicial district *of this state*. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this part.

(16) *The protection provided by this part does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer that is other than this state.*"

Section 4. Section 33-10-210, MCA, is amended to read:

"33-10-210. Unfair trade practice — notice to policyowners. (1) It is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) The association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, ~~an~~ *a member* insurer may not deliver a policy or contract described in ~~33-10-201(4)~~ *33-10-224(2)(a)* to a policyowner or contract owner unless the document is delivered to the policyowner or contract owner prior to or at the time of delivery of the policy or contract, ~~unless subsection (4) of this section applies~~. The document must be available upon request by a policyowner. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the owner of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this part may require. Failure to receive this document does not give the policyowner, contract owner, certificate holder, or insured any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the policyowner or contract owner that the life and health insurance guaranty association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the policyowner or contract owner should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

(4) An insurer or *an* insurance producer may not deliver a policy or contract described in ~~33-10-201(4)~~ *33-10-224(2)(a)* and excluded under ~~33-10-201(10)~~ *33-10-224(2)(b)* from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the policyowner or contract owner a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4)."

Section 5. Section 33-10-216, MCA, is amended to read:

“33-10-216. Plan of operation — delegation of powers provision.

(1) (a) The association shall submit to the commissioner a plan of operation and any amendments ~~thereto to the plan that are~~ necessary or suitable to ~~assure~~ ensure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments ~~thereto shall to the plan~~ become effective upon ~~the commissioner's written approval in writing by the commissioner or 60 days after receipt by the commissioner's office if the commissioner does not disapprove the submitted plan of operation and any amendments within those 60 days.~~ the commissioner's written approval in writing by the commissioner or 60 days after receipt by the commissioner's office if the commissioner does not disapprove the submitted plan of operation and any amendments within those 60 days.

(b) If the association fails to submit a suitable plan of operation within 180 days following July 1, 1974, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. ~~Such~~ The rules shall continue remain in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall ~~must~~, in addition to requirements enumerated elsewhere in this part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under 33-10-204;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for ~~keeping~~ records to be kept of all financial transactions of the association, its insurance producers agents, and the board of directors;

(e) establish the procedures whereby ~~selections for to select~~ the board of directors will be made and submitted ~~submit notice of the selections~~ to the commissioner;

(f) establish any additional procedures for assessments under 33-10-227;

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under ~~33-10-205(1)(e)~~ 33-10-205(9)(c) and 33-10-227, are may be delegated to a corporation, association, or other organization which that performs or will perform functions similar to those of this association or its equivalent in two or more states. ~~Such a~~ A corporation, association, or organization shall to which these powers and duties are delegated must be reimbursed for any payments made on behalf of the association and shall must be paid for its performance of performing any function of the association. A delegation of authority under this subsection shall may take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which that extends protection not substantially less favorable and or less effective than that provided by this part.”

Section 6. Section 33-10-217, MCA, is amended to read:

“33-10-217. Prevention of insolvencies or impairments. (1) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall:

(a) (i) notify the commissioners of all the other states, ~~the territories of the United States, and the District of Columbia~~ when the commissioner takes any of the following actions against a member insurer:

(A) the revocation of a license;

(B) the suspension of a license; or

(C) the issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyowners or creditors;

(ii) mail the notice to all commissioners within 30 days following the action taken or the date on which the action occurs;

(b) report to the board of directors when the commissioner has taken any of the actions set forth in subsection (1)(a) or has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.

(c) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer; and

(d) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board of directors may use the information contained in the ratios and listings in carrying out its duties and responsibilities under this section. The report and the information contained in the ratios and listings must be kept confidential by the board of directors until ~~the time it is made public by the commissioner or other lawful authority~~ *makes the report or information public.*

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

(5) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer or germane to the solvency of any company seeking to provide life or health insurance in this state. The reports and recommendations are not considered public documents.

(6) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments or insolvencies.

~~(7) The board of directors shall, at the conclusion of any insurer impairment or insolvency in which the association carried out its duties under this part or~~

exercised any of its powers under this part, prepare a report on the history and causes of the impairment or insolvency, based on the information available to the association, and submit the report to the commissioner. The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of impairment or insolvency of a particular insurer and may adopt by reference any report prepared by other associations.”

Section 7. Section 33-10-222, MCA, is amended to read:

“33-10-222. Stay of proceedings — reopening default judgments. (1) All proceedings in which the impaired or insolvent insurer is a party in any court in this state must be stayed 60 *180* days from the date an order of liquidation, rehabilitation, or supervision is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have the judgment set aside by the same court that made the judgment and must be permitted to defend against the suit on the merits.”

Section 8. Section 33-10-223, MCA, is amended to read:

“33-10-223. Assignment by beneficiaries — subrogation. (1) Any person receiving benefits under this part must be considered to have assigned the person’s rights under the covered policy or contract, pertaining to any causes of action against the person for losses resulting from or otherwise relating to the covered policy or contract, to the association to the extent of the benefits received because of this part whether the benefits are payments of contractual obligations or continuation of coverage or provision of substitute or alternative coverage. The association may require an assignment to it of the rights by any payee, policyowner or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon the person. The association must be subrogated to these rights against the assets of any impaired *or insolvent* insurer.

(2) The subrogation rights of the association under this section have the same priority against the assets of the impaired *or insolvent* insurer as that possessed by the person entitled to receive benefits under this part.

(3) In addition to the rights detailed in this section, the association has all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this part, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity *or payment for the annuity*, except for any person responsible solely by reason of serving as an assignee with respect to a qualified assignment under section 130 of the Internal Revenue Code.

(4) If subsections (1) through (3) are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policy or a portion of the policy covered by the association.

(5) If the association has provided benefits with respect to a covered obligation and a person recovers any amount to which the association has rights

as described in this section, the person shall pay to the association the portion of the recovery attributable to the policy or a portion of the policy covered by the association.”

Section 9. Section 33-10-224, MCA, is amended to read:

“33-10-224. *Extent Coverage, limitations, and extent of liability.* (1)

(a) *This part establishes coverage for the policies and contracts specified in subsection (2) to persons who, except as provided in subsections (1)(b) through (1)(e), are:*

(i) *beneficiaries, assignees, or payees of the persons covered under subsection (1)(a)(ii) regardless of where the beneficiaries, assignees, or payees reside, except for nonresident certificate holders under group policies or contracts;*

(ii) *owners of or certificate holders under the policies and contracts specified in subsection (2), other than unallocated annuity contracts and structured settlement annuities that are provided for in subsections (1)(b) and (1)(c), if the persons are:*

(A) *residents; or*

(B) *nonresidents, but only under all of the following conditions:*

(I) *the insurer that issued the policies is domiciled in this state;*

(II) *the state in which the person resides has an association similar to the association created under this part; and*

(III) *the person is not eligible for coverage by an association in any other state because the insurer was not licensed in the state at the time specified in the state’s guaranty association law.*

(b) *The provisions of subsection (1)(a) do not apply to unallocated annuity contracts specified in subsection (2). A person who is the owner of an unallocated annuity contract receives coverage under this part, except as provided in subsections (1)(d) and (1)(e), if:*

(i) *the contract is issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; or*

(ii) *the unallocated annuity contract was issued to or in connection with a government lottery if the owner is a resident.*

(c) *The provisions of subsection (1)(a) do not apply to structured settlement annuities specified in subsection (2). A person who is a payee under a structured settlement annuity or the beneficiary of a payee if the payee is deceased receives coverage under this part, except as provided in subsections (1)(d) and (1)(e), if the payee:*

(i) *is a resident, regardless of where the contract owner resides; or*

(ii) *is not a resident and one of the following conditions applies:*

(A) *The contract owner of the structured settlement annuity is a resident and is not eligible for coverage by another state’s association, and the payee or beneficiary is not eligible for coverage by the association of the state in which the payee or beneficiary resides.*

(B) *The contract owner of the structured settlement annuity is not a resident, the insurer that issued the structured settlement annuity is domiciled in this state, the state in which the contract owner resides has an association similar to the association created by this part, and the payee, beneficiary, and contract owner are not eligible for coverage by the association in the state in which the payee, beneficiary, or contract owner resides.*

(d) *This part does not provide coverage to:*

(i) a person who is a payee or a beneficiary of a contract owner that is a resident of this state if the payee or beneficiary is afforded any coverage by the association of another state; or

(ii) a person covered under subsection (1)(b) if any coverage is provided by the association of another state to the person.

(e) This part is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, a person may not receive coverage under this part if the person who would otherwise receive coverage under this part receives coverage under the laws of any other state. To determine the application of this subsection (1)(e) to a situation in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this part must be construed in conjunction with other state laws to result in coverage by only one association.

(2) (a) (i) Except as otherwise provided in this part, this part provides coverage to the persons specified in subsection (1) for:

(A) direct, nongroup life and health policies, direct, nongroup annuity contracts, and supplemental contracts to any of these;

(B) certificates under direct group policies and contracts and supplemental contracts to any of these; and

(C) unallocated annuity contracts issued by member insurers.

(ii) Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued in connection with government lotteries, and any immediate or deferred annuity contracts.

(b) This part does not provide coverage for:

(i) a portion of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract owner;

(ii) a policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) a portion of a policy or contract to the extent that the rate of interest on which the portion is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) when averaged over the period of 4 years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this part exceeds the rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average that is averaged for that same period or for a lesser period if the policy or contract was issued less than 4 years before the member insurer became an impaired or insolvent insurer under this part; and

(B) when the returns or changes in value exceed the rate of interest determined by subtracting 3 percentage points from the Moody's corporate bond yield average most recently available on or after the date on which the member insurer becomes an impaired or insolvent insurer under this part.

(iv) a portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:

(A) a multiple employer welfare arrangement as defined in 29 U.S.C. 1002;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(v) a portion of a policy or contract to the extent that it contains provisions for dividends, experience rating credits, or voting rights or for payment of any fees or allowances to any person, including the policyowner or contract owner, in connection with the service to or administration of the policy or contract;

(vi) a policy or contract issued in this state by a member insurer at any time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) any unallocated annuity contract issued to or in connection with a benefit plan that is protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;

(viii) a portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons' benefit plan or a government lottery;

(ix) a portion of a policy or contract to the extent that federal or state law preempts or otherwise does not permit the assessments required by 33-10-227 with respect to the policy or contract;

(x) an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policyowner, including without limitation:

(A) claims based on marketing materials;

(B) claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable requirements for filing policy forms or for policy approval;

(C) misrepresentation of or regarding policy benefits;

(D) extracontractual claims; or

(E) a claim for penalties or consequential or incidental damages;

(xi) a contractual agreement that establishes the member insurer's obligation to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case may not be an affiliate of the member insurer;

(xii) a portion of a policy or contract to the extent that it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policyowner's or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under this part. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of the impairment or insolvency of the member insurer, and the interest or changes in value are not subject to forfeiture.

(xiii) a policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to 42 U.S.C. 1395w-21 through 1395w-152, commonly known as medicare parts C and D, or any regulations issued pursuant to medicare parts C and D.

~~(1)(3)~~ The benefits for which the association may become liable may not exceed the lesser of:

(a) the contractual obligations of the ~~impaired or insolvent insurer~~ for which the insurer ~~becomes~~ *is liable* or would have become liable if it were not an impaired or insolvent insurer; or

(b) (i) ~~except as provided in subsection (2),~~ with respect to any one life, regardless of the number of policies or contracts:

(A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(B) in health insurance benefits:

(I) \$500,000 for basic hospital, medical, and surgical insurance or major medical insurance as defined in the covered policy or contract;

(II) \$300,000 for disability *income* insurance ~~as defined in the covered policy or contract;~~

~~(III) \$300,000 for long-term care insurance;~~

~~(IV)~~ (IV) \$100,000, including any net cash surrender and net cash withdrawal values, for coverages not included in ~~(1)(b)(i)(B)(I) and (1)(b)(i)(B)(II) subsections (3)(b)(i)(B)(I) through (3)(b)(i)(B)(III);~~

(C) ~~\$100,000~~ \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(ii) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, \$100,000 \$250,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values;

~~(iii) with respect to any one contract owner covered by any unallocated annuity contract not included in subsection (1)(b)(ii), \$5 million in benefits, irrespective of the number of contracts held by that contract owner;~~

~~(iv)~~ (iii) with respect to each payee of a structured settlement annuity or beneficiary of the payee if the payee is deceased, \$100,000 \$250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

~~(v)~~ (iv) with respect to either one contract owner provided coverage under ~~33-10-201(6) subsection (1)(b)~~ or one plan sponsor whose ~~plans own~~ *plan owns* directly or in trust one or more unallocated annuity contracts not included in subsection ~~(1)(b)(ii) (3)(b)(ii)~~, \$5 million in benefits, irrespective of the number of contracts held by the contract owner or plan sponsor. If one or more unallocated annuity contracts are covered contracts under this part and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state, ~~and in any. In no event, is the association is not~~ obligated to cover more than \$5 million in benefits with respect to all these unallocated contracts.

~~(2)(4)~~ *The In no event is the association is not* obligated to cover more than:

(a) an aggregate of \$300,000 in benefits with respect to any one life under subsections ~~(1)(b)(i), (1)(b)(ii), and (1)(b)(iii)~~ *(3)(b)(i) through (3)(b)(iii)*, except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under subsection ~~(1)(b)(i)~~ *(3)(b)(i)*, in which case the aggregate liability of the association may not exceed \$500,000 with respect to any one individual; and

(b) with respect to one owner of multiple nongroup policies of life insurance, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, \$5 million in benefits, regardless of the number of policies and contracts held by the owner.

~~(3)(5)~~ The limitations set forth in this section are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this part may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

~~(4)(6)~~ In performing its obligations to provide coverage under this part, the association is not required to guarantee, assume, reinsure, or perform or cause to be guaranteed, assumed, reinsured, or performed the contractual obligations of the impaired or insolvent insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract."

Section 10. Section 33-10-225, MCA, is amended to read:

"33-10-225. Association as creditor — use of assets. (1) For the purpose of carrying out its obligations under this part, the association ~~shall be deemed to be~~ *is* a creditor of the impaired *or insolvent* insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to 33-10-223.

(2) All assets of the impaired *or insolvent* insurer attributable to covered policies ~~shall~~ *must* be used to continue all covered policies and pay all contractual obligations of the impaired *or insolvent* insurer as required by this part. Assets attributable to covered policies, as used in this section, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired *or insolvent* insurer.

(3) *As a creditor of the impaired or insolvent insurer, as established in this part and consistent with 33-2-1363, the association and other similar associations are entitled to receive a disbursement of assets out of the marshalled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this part. If, within 120 days of the receivership court issuing a final determination of insolvency of an insurer, the liquidator has not made an application to the court for the approval of a proposal to disburse assets out of marshalled assets to guaranty associations having obligations because of the insolvency, then the association may make application to the receivership court for approval of its own proposal to disburse those assets."*

Section 11. Section 33-10-226, MCA, is amended to read:

"33-10-226. Distribution of ownership rights — distribution to shareholders. (1) Prior to the termination of any liquidation, rehabilitation, or supervision proceeding, the court may take into consideration the contributions

of the respective parties, including the association, the shareholders, and policyowners of the impaired or insolvent insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the impaired or insolvent insurer. In the determination, consideration must be given to the welfare of the policyowners of the continuing or successor insurer.

(2) A distribution to stockholders, if any, of an impaired or insolvent insurer may not be made until and unless the *association has fully recovered the total amount of assessments levied by the association with respect to the insurer have been fully recovered by the association valid claims of the association, with interest, for funds expended in carrying out its powers and duties under this part.*"

Section 12. Section 33-10-227, MCA, is amended to read:

"33-10-227. Assessments — abatement — basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at the times and for the amounts as the board finds necessary. ~~The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.~~

(2) *Assessments are due not less than 30 days after prior written notice to the member insurers. An unpaid assessment accrues interest at 10% a year on and after the due date. The association may also impose any charges on a late-paid assessment if the plan of operation provides for late-paid assessments.*

~~(2)~~(3) There are two classes of assessments, as follows:

(a) Class A assessments must be ~~made authorized and called~~ for the purpose of meeting administrative *and legal* costs and other ~~general~~ expenses. *Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.*

(b) Class B assessments must be ~~made authorized and called~~ to the extent necessary to carry out the powers and duties of the association under ~~33-10-219 and 33-10-220~~ *33-10-205* with regard to an impaired or insolvent insurer.

~~(3)~~(4) (a) The amount of any Class A assessment for each account must be determined by the board *and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that the amount be credited against future Class B assessments. The total of all non-pro rata assessments may not exceed \$300 for each member insurer in any 1 calendar year.* The amount of any Class B assessment must be ~~divided allocated for assessment purposes~~ among the accounts ~~in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account bear to the premiums received by the insurer on all covered policies pursuant to an allocation formula that may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board in its sole discretion as being fair and reasonable under the circumstances.~~

(b) Class B assessments against member insurers for each account *and subaccount* must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies *or contracts* covered by each account *or subaccount* bear to the premiums received on business in this state by all assessed member insurers. *This ratio must be calculated from information that is available for the 3 most recent calendar years preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the 3 most recent calendar years for which*

information is available preceding the year in which the insurer became impaired.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be ~~made authorized and called~~ until necessary to implement the purposes of this part. Classification of assessments under subsection ~~(2)~~ (3) and computation of assessments under this subsection (4) must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. *The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.*

~~(4)~~(5) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. ~~The total of all assessments upon a member insurer for each account may not in any 1 calendar year exceed 2% of the insurer's premiums in this state on the policies covered by the account.~~

~~(5)~~ In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which the assessment is abated or deferred ~~must~~ *may* be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. ~~If the maximum assessment, together with the other assets of the association in either account, does not provide in any 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon after that year as permitted by this part. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.~~

(6) (a) (i) *Subject to the provisions of subsection (6)(a)(ii), the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account may not in 1 calendar year exceed 2% of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the 3 calendar years preceding the year in which the insurer became an impaired or insolvent insurer.*

(ii) *If two or more assessments are authorized in 1 calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subsection (6)(a)(i) must be equal and limited to the higher of the 3-year average annual premiums for the applicable account or subaccount as calculated pursuant to this section.*

(iii) *If the maximum assessment, together with the other assets of the association in an account, does not provide in 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon as permitted by this part.*

(b) *The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, for use when the board determines that the maximum assessment is insufficient to cover anticipated claims.*

~~(6)~~(c) *If ~~a 1%~~ the maximum assessment for ~~any~~ a subaccount of the life insurance ~~account~~ and the annuity account in ~~any~~ 1 year does not provide an*

amount sufficient to carry out the responsibilities of the association, then pursuant to subsection ~~(3)(b)~~ (4)(b), the board shall assess ~~at the other~~ subaccounts of the life insurance ~~account~~ and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection ~~(4)~~ (6)(a).

(7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that ~~amount~~ account, including assets accruing from *assignment, subrogation, and* net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses ~~if refunds are impractical~~.

(8) It is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in that form and for the amount, if any, and period of time that the commissioner may approve.

(10)(a) A member insurer that wishes to protest all or a part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment must be available to meet association obligations during the pendency of the protest or any subsequent appeal. A written statement must accompany the payment and must indicate that the payment is made under protest and include a brief description of the grounds for the protest.

(b) Within 60 days after the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issue raised by the protest.

(c) Within 30 days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(d) Instead of rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal of the assessment is upheld, the amount paid in error or excess must be returned to the member insurer. Interest on a refund due to a protesting member insurer must be paid at the rate actually earned by the association.

(11) The association may request information of member insurers to aid in the exercise of its powers and duties under this section. Member insurers shall promptly comply with a request from the association.”

Section 13. Repealer. The following sections of the Montana Code Annotated are repealed:

- 33-10-219. Impaired insurer — association’s powers.
- 33-10-220. Insolvent insurer — association’s powers.
- 33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions.

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date — applicability. [This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act].

Approved March 18, 2011

CHAPTER NO. 28

[HB 17]

AN ACT RELATING TO THE RELATIONSHIP OF STATE AGENCY LIQUOR STORES WITH OTHER LIQUOR LICENSEES; CORRECTING TERMINOLOGY DESCRIBING STATE AGENCY LIQUOR STORES; AMENDING SECTION 16-2-203, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 16-2-203, MCA, is amended to read:

“16-2-203. Department sales Sales to licensees. ~~The department may sell through its stores~~ *Agency liquor stores may sell* to licensees licensed under this code all kinds of liquor and table wine at the posted price thereof in the store in which the liquor and table wine are sold. All sales shall ~~be~~ *must be upon made on* a cash basis.”

Section 2. Applicability. [This act] applies to sales made by agency liquor stores under [section 1] after September 30, 2011.

Approved March 23, 2011

CHAPTER NO. 29

[HB 24]

AN ACT GENERALLY REVISING WATER LAWS RELATED TO AQUIFER RECHARGE AND MITIGATION; PROVIDING UP TO 20 YEARS TO COMPLETE A CHANGE OF USE FOR AQUIFER RECHARGE OR MITIGATION OR MARKETING FOR AQUIFER RECHARGE OR MITIGATION; AND AMENDING SECTIONS 85-2-102, 85-2-310, AND 85-2-402, MCA.

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

Section 1. Change in appropriation right for aquifer recharge or mitigation — marketing. (1) Subject to 85-2-402 and this section, an appropriator may apply for a change in appropriation right for the purpose of aquifer recharge or mitigation or for the purpose of marketing water for aquifer recharge or mitigation.

(2) During the completion period authorized by the department for a change pursuant to this section, the appropriator may continue to use the appropriation right for any authorized beneficial use provided that proportionate amounts of the appropriation right are retired as the mitigation or aquifer recharge beneficial use is perfected.

(3) (a) If the full amount of the appropriation right is not sold or marketed as mitigation or aquifer recharge prior to the completion date, the water right retains the beneficial uses authorized prior to the change approved pursuant to this section.

(b) For an appropriation right that retains the original beneficial uses pursuant to this section, the flow rate and volume of water allowed at the point of diversion must be equal to the flow rate and volume allowed under the initial beneficial uses minus the amount that was sold or marketed for mitigation or aquifer recharge.

(4) As part of a change in appropriation right approved pursuant to this section, the department shall:

(a) determine a period for the change in appropriation right to be completed that does not exceed 20 years; and

(b) require the appropriator to notify the department within 30 days each time a portion of the change is completed.

Section 2. Section 85-2-102, MCA, is amended to read:

“85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Appropriate” means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) “Aquifer recharge” means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground

surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 3. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application for permit or change in appropriation right. (1) (a) If the department proposes to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.

(b) (i) Upon request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.

(ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.

(2) A proposal to grant an application with or without conditions following a hearing on a proposal to deny the application must proceed as if the department proposed to grant the application in its preliminary determination pursuant to 85-2-307.

(3) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.

(4) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

(5) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 within 90 days after the administrative record is closed.

(6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(7) Except as provided in subsection (6), an application may not be denied or approved in a modified form or upon terms, conditions, or limitations specified by the department unless the applicant is first granted an opportunity to be heard. If an objection is not filed against the application but the department is of the opinion that the application should be denied or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied unless a hearing is requested.

(8) The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(9) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

- (a) an application is not corrected and completed as required by 85-2-302;
- (b) the appropriate filing fee is not paid;
- (c) the application does not document:

- (i) a beneficial use of water;
- (ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (9)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) *except as provided in subsection (10)*, if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124.

(10) If water applied for is to be marketed by the applicant to other users for the purpose of aquifer recharge or mitigation, the applicant is exempt from the provisions of subsection (9)(c)(v). The applicant must provide information detailing the proposed place of use."

Section 4. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights — definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) As used in this part, "national forest system lands" has the same meaning as that provided in 85-20-1401, Article I.

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

~~(b) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the proposed means of diversion, construction, and operation of the appropriation works are adequate.~~

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to [section 1] for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

~~(d) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.~~

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) *a change in appropriation right pursuant to [section 1] for mitigation or marketing for mitigation.*

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate

conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified

statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;

or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:

(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.

(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).

(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.”

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

Approved March 23, 2011

CHAPTER NO. 30

[HB 65]

AN ACT CHANGING THE ENTITY RESPONSIBLE FOR PAYING THE EXPENSES OF AN INTERPRETER FOR A DEAF INDIVIDUAL IN A CRIMINAL PROCEEDING IN A DISTRICT COURT FROM THE COUNTY GENERAL FUND TO THE OFFICE OF COURT ADMINISTRATOR; AND AMENDING SECTION 49-4-509, MCA.

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

Section 1. Section 49-4-509, MCA, is amended to read:

“49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for the interpreter’s services, together with actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding *in a district court*, the fee must be paid ~~out of the county general fund by the office of court administrator in accordance with judicial branch policy~~, and when the interpreter is otherwise appointed, the fees must be paid out of funds available to the appointing authority.”

Approved March 23, 2011

CHAPTER NO. 31

[HB 96]

AN ACT ALLOWING THE OFFICE OF STATE PUBLIC DEFENDER TO RECOVER ITS COSTS OF REPRESENTATION FROM A RESPONDENT IN CERTAIN CASES; AND AMENDING SECTION 47-1-110, MCA.

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

Section 1. Section 47-1-110, MCA, is amended to read:

“47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) ~~Beginning July 1, 2006, money~~ Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act; ~~and~~

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; *and*

(d) *payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111.”*

Approved March 23, 2011

CHAPTER NO. 32

[HB 114]

AN ACT AMENDING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COVERAGE FOR MENTAL HEALTH COUNSELING EXPENSES FOR MINOR CHILDREN PRESENT IN HOMES WHERE DOMESTIC VIOLENCE HAS OCCURRED; AND AMENDING SECTIONS 53-9-103, 53-9-123, AND 53-9-128, MCA.

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

Section 1. Section 53-9-103, MCA, is amended to read:

“53-9-103. Definitions. As used in this part, the following definitions apply:

(1) “Claimant” means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) “Collateral source” means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers’ compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or

(i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;

(b) results in bodily injury or death or *involves domestic violence in a home where minor children were present*; and

(c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Office" means the office of victims services established in 2-15-2016.

(6) "Victim" means:

(a) a person who suffers bodily injury or death as a result of:

~~(a)(i)~~ criminally injurious conduct;

~~(b)(ii)~~ the person's good faith effort to prevent criminally injurious conduct;

or

~~(e)(iii)~~ the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct; or

(b) a minor child present in a home where domestic violence occurred."

Section 2. Section 53-9-123, MCA, is amended to read:

"53-9-123. Evidence of condition. (1) The office may require the claimant to supplement the application with any reasonably available medical or *counseling* reports relating to the injury for which compensation is claimed.

(2) If the physical condition of a victim or claimant is material to a claim, the office may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The office shall pay for the examination or autopsy. The order must specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and must require the person to file with the office a detailed written report of the examination or autopsy. The report must set out physician's findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the office shall furnish the person a copy of the report. If the victim is deceased, the office, on request, shall furnish the claimant a copy of the report.

(3) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical condition of the claimant or victim in a proceeding under this part in which that condition is an element."

Section 3. Section 53-9-128, MCA, is amended to read:

"53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and other treatment approved by the office for the injuries suffered due to criminally injurious conduct. Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total wage loss benefits as provided in subsection (1) or (7).

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other dependents unless the office determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid to the other dependents as long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding ~~\$3,500~~ \$3,500, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was employable but was not employed at the time of the injury may in the discretion of the office be awarded weekly compensation benefits in an amount determined by the office not to exceed \$100 per week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market. The claimant must be awarded benefits as provided in subsection (2).

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the office be awarded, in a gross single amount payable to all dependents, a sum not to exceed \$100 per week, which is payable in the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the office. The claimant must be awarded benefits as provided in subsection (4).

(8) Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection ~~(9)(e)~~ (9)(d), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection ~~(9)(e)~~ (9)(d), the parent, brother, or sister of a minor who is a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

(c) *Subject to the limitations in subsection (9)(d), minor children who were present in a home where domestic violence occurred are entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.*

~~(e)(d)~~ Total payments made under subsections (9)(a) ~~and (9)(b) through (9)(c)~~ may not exceed \$2,000 or 12 consecutive months of treatment for each person, whichever occurs first."

Approved March 23, 2011

CHAPTER NO. 33

[HB 156]

AN ACT INCREASING THE ALLOWANCE TO BE PAID BY THE COUNTY OF RESIDENCE FOR THE INTERMENT AND THE SHIPPING AND RAISING OF A HEADSTONE FOR A VETERAN; AMENDING SECTION 10-2-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-2-501, MCA, is amended to read:

“10-2-501. Interment allowance for veterans — payment by county of residence — veterans’ interment supervisor — definitions. (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans’ interment supervisor.

(2) The veterans’ interment supervisor shall cause to be decently interred the body or cremated remains of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans’ interment supervisor shall ensure that the desires of the veteran’s personal representative or heirs are not violated. The veterans’ interment supervisor may not receive any compensation for duties performed in compliance with this part.

(3) The interment may not be made in a burial ground or cemetery or in a portion of a burial ground or cemetery used exclusively for the interment of pauper dead.

(4) A sum not to exceed ~~\$250~~ *\$500* to defer interment expenses must be paid by the veteran’s county of residence.

(5) The interment benefits are not available in the case of a veteran whose personal representative or heirs waive the benefits.

(6) Whenever interment is of a resident of a Montana veterans’ home, a sum not to exceed ~~\$250~~ *\$500* to defer interment expenses must be paid by the veteran’s county of residence.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the interment expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) When a veteran dies at an institution of the state of Montana, other than a Montana veterans’ home, at a federal institution, or at a private facility and interment for any cause is not made in the veteran’s county of residence, the officers of the institution or facility shall provide the proper interment prescribed in this section. The reimbursement for the expense of each interment may not exceed ~~\$250~~ *\$500*. The expense must be paid by the veteran’s county of residence.

(9) An interment may not be covered by any special or standing contract under which the cost of interment is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans’ interment supervisor shall, upon request of the deceased veteran’s personal representative or heirs, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran’s grave. The reimbursement costs for the shipping and raising of the headstone may not exceed an amount equal to the actual cost paid, up to ~~\$70~~ *\$100*, and must be paid by the veteran’s county of residence at the time of death. The expense must be audited and paid as provided in this section for interment expenses.

(11) As used in this part, the following definitions apply:

(a) “Interment” has the meaning provided in 37-19-101.

(b) “Residence” is determined as provided in 13-1-112. If the intent of the veteran regarding residence cannot be determined under 13-1-112, the costs of interment must be paid by the veteran’s county of residence at the time of admittance into a Montana veterans’ home, a state or federal institution, or a private facility.”

Section 2. Effective date. [This act] is effective on passage and approval.
Approved March 23, 2011

CHAPTER NO. 34

[HB 210]

AN ACT ALLOWING FOR THE ISSUANCE OF A TERM PERMIT FOR AN OVERLENGTH OR OVERWIDTH VEHICLE MOVING A MOBILE HOME OR A MANUFACTURED HOME IF THE VEHICLE DOES NOT EXCEED 110 FEET IN LENGTH OR 16 FEET IN WIDTH; AND AMENDING SECTION 61-10-124, MCA.

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

Section 1. Section 61-10-124, MCA, is amended to read:

“61-10-124. (Temporary) Special permits — fees. (1) Except as provided in subsections ~~(2)(b)~~; (2)(d); and (4), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), ~~(2)(h)~~, (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Except as provided in subsection (2)(g), a Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). ~~The fee for this permit is \$75.~~ This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the

department may authorize travel between the terminal and the interchange. The fee for this permit is \$125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is \$125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) A Rocky Mountain double carrying baled hay may not exceed 88 feet of combined trailer length.

(h) *A term permit may be issued for an overlength vehicle moving a mobile home or a manufactured home, as defined in 15-24-201, when the vehicle does not exceed 110 feet in length or 16 feet in width.*

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over or tilt-cab truck tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a special overlength permit issued at a fee of \$200 for a term permit or \$20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is \$200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment. (Void on occurrence of contingency—sec. 2, Ch. 285, L. 2003.)

61-10-124. (Effective on occurrence of contingency) Special permits — fees. (1) Except as provided in subsections (2)(b), (2)(d), and (4), in addition to the regular registration and gross vehicle weight fees, a fee of \$10 for each trip permit and a fee of \$75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (2)(g), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify

highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). ~~The fee for this permit is \$75.~~ This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is \$125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is \$125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) *A term permit may be issued for an overlength vehicle moving a mobile home or a manufactured home, as defined in 15-24-201, when the vehicle does not exceed 110 feet in length or 16 feet in width.*

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is

beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over or tilt-cab truck tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a special overlength permit issued at a fee of \$200 for a term permit or \$20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is \$200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment."

Approved March 23, 2011

CHAPTER NO. 35

[HB 263]

AN ACT ALLOWING COUNTY WATER AND SEWER DISTRICTS TO USE ONE OR ANY COMBINATION OF ASSESSMENT METHODS TO MEET BOND OBLIGATIONS AND OTHER EXPENSES; AND AMENDING SECTION 7-13-2303, MCA.

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

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

“7-13-2303. Method Methods of assessment. (1) When the amount of money required for any purpose enumerated in 7-13-2302 has been determined, the county commissioners or board of directors may use *one or any combination* of the following methods of assessment:

(a) ~~each~~ *Each* lot or parcel of land to be assessed ~~must~~ *may* be assessed with that part of the amount of money required that its area bears to the total area of all of the lands to be assessed;

(b) ~~the~~ *The* assessment may, ~~at the option of the board or boards of county commissioners,~~ be based upon the taxable valuation as stated in the last-completed county assessment roll of the lots or parcels of land, exclusive of improvements, within the district. In that case, each lot or parcel of land to be assessed must be assessed with that part of the amount of money required that its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(c) ~~each~~ *Each* dwelling unit may be assessed a flat fee. For purposes of this subsection (1)(c), “dwelling unit” has the *same* meaning provided for in 70-24-103.

(2) If the district lies in more than one county, the same method of assessment must be used *by in each board of county commissioners county.*”

Approved March 23, 2011

CHAPTER NO. 36

[HB 359]

AN ACT REVISING WORKERS' COMPENSATION LAW PERTAINING TO SETTLEMENTS AND LUMP-SUM PAYMENTS; AMENDING SECTIONS 39-71-703, 39-71-721, AND 39-71-741, 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 39-71-703, MCA, is amended to read:

“39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is not based exclusively on complaints of pain;

(ii) is established by objective medical findings; and

(iii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 375 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is $66 \frac{2}{3}\%$ of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum conversions for benefits not accrued may be reduced to present value at the rate established by the department pursuant to 39-71-741~~(3)~~(5).

(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(10) As used in this section:

(a) “heavy labor activity” means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) “medium labor activity” means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) “light labor activity” means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) “sedentary labor activity” means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.”

Section 2. Section 39-71-721, MCA, is amended to read:

“39-71-721. Compensation for injury causing death — limitation.

(1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary’s eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary’s biweekly payments as provided in 39-71-741(9)(5).

(2) To beneficiaries as defined in 39-71-116(4)(a) through (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent’s wages. The maximum weekly compensation benefit may not exceed the state’s average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state’s average weekly wage, but in no event may it exceed the decedent’s actual wages at the time of death.

(3) To beneficiaries as defined in 39-71-116(4)(e) and (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent’s wages. The maximum weekly compensation may not exceed the state’s average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the decedent’s surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee’s death or until the spouse’s remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(4)(b) through (4)(d).

(6) In all cases, benefits must be paid to beneficiaries.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.”

Section 3. Section 39-71-741, MCA, is amended to read:

“39-71-741. ~~Compromise settlements~~ Settlements and lump-sum payments. (1) By written agreement, a claimant and an insurer may convert benefits under this chapter ~~may be converted~~ in whole or in part into a lump sum. An agreement that settles a claim for any type of benefit is subject to department approval as provided in subsection (2). Lump-sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection (1)(e) (2)(c), are not subject to department approval. If

the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved.

(2) The department shall directly notify a claimant of a department order approving or disapproving a claimant's ~~compromise settlement~~ or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve ~~an~~ a settlement agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any ~~permanent partial lump-sum conversion payment~~ in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection ~~(1)(b)~~ (2)(b) only if the department determines that the lump-sum ~~conversion payment~~ amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum conversions in part that are awarded to a claimant do not exceed \$20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court ~~must be~~ is the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(d) except as otherwise provided in this chapter, all other ~~compromise settlements and lump-sum payments~~ agreed to by a claimant and insurer; or

(e) medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability; or

(f) *medical benefits on an accepted claim if the claimant has reached maximum medical improvement and the following applicable conditions are met:*

(i) *the insurer and claimant mutually agree to a settlement of all or a portion of medical benefits; and*

(ii) *a settlement is in the best interest of the parties to the settlement.*

(3) *The parties to a medical settlement agreement shall set out the rationale that is the basis for the settlement, and the claimant shall indicate by a signed acknowledgment an understanding of what medical benefits will terminate because of the settlement.*

~~(2)~~(4) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection ~~(3)~~(b) (5)(b).

~~(3)~~(5) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

~~(4)~~(6) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination.

(7) If an insurer and a claimant agree to a ~~compromise and release~~ settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision *without requesting mediation*.

(8) *The legislature does not intend to allow settlement of undisputed medical claims under subsection (2)(f) unless all parties willingly agree to the settlement. The failure of the parties to willingly agree to a settlement does not constitute a dispute concerning benefits.*

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

Section 5. Retroactive applicability. [Section 3] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled by [the effective date of this act].

Approved March 23, 2011

CHAPTER NO. 37

[SB 26]

AN ACT REQUIRING THAT A TEMPORARY ORDER OF PROTECTION CONTAIN A WARNING THAT A VIOLATION OF THE ORDER IS A CRIMINAL OFFENSE; AND AMENDING SECTION 40-15-201, MCA.

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

Section 1. Section 40-15-201, MCA, is amended to read:

“40-15-201. Temporary order of protection. (1) A petitioner may seek a temporary order of protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:

(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;

(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or

indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;

(c) prohibiting the respondent from removing a child from the jurisdiction of the court;

(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;

(e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;

(f) prohibiting the respondent from possessing or using the firearm used in the assault;

(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;

(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;

(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;

(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.

(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.

(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.

(5) *A temporary order of protection issued pursuant to this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 and may also be a criminal offense under 45-5-220."*

Approved March 23, 2011

CHAPTER NO. 38

[SB 41]

AN ACT ALLOWING A CITY TO ESTABLISH A CITY COURT OF RECORD; PROVIDING THAT APPEALS FROM A CITY COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AMENDING SECTIONS 3-1-102, 3-11-101, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

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

“3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, the workers’ compensation court, the municipal courts, ~~and~~ the justices’ courts of record, *and the city courts of record* are courts of record.”

Section 2. Section 3-11-101, MCA, is amended to read:

“3-11-101. City court established — city court of record. (1) A city court is established in each city or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

(2) *A city may establish the city court as a court of record. If the city court is established as a court of record, it must be known as a “city court of record”. The court’s proceedings must be recorded by electronic recording or stenographic transcription, and all papers filed in a proceeding must be included in the record. A city court of record may be established by a resolution of the city commissioners or pursuant to 7-5-131 through 7-5-137.”*

Section 3. Powers and duties of city court of record. (1) Except as otherwise provided by Title 25, chapter 30, and this chapter, the judge in a city court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The judge may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The city court of record shall establish rules for appeal to district court. The rules are subject to the supreme court’s rulemaking and supervisory authority.

Section 4. Appeal to district court from city court of record — record on appeal. (1) A party may appeal to district court a judgment or order from a city court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court’s rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a city court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the city court of record.

Section 5. Section 25-33-301, MCA, is amended to read:

“25-33-301. Trial de novo — pleadings — conduct of trial. (1) Except as provided in subsection (3), all appeals from justices’ or city courts must be tried anew in the district court on the papers filed in the justice’s or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice’s or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court of record pursuant to 3-10-101 is on the record as provided in 3-10-115. *The appeal from a city court of record pursuant to 3-11-101 is on the record as provided in [section 4].*"

Section 6. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, ~~and~~ an appeal from a justice's court of record is governed by 3-10-115, *and an appeal from a city court of record is governed by [section 4].*

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

(4) A defendant may appeal a justice's court, other than a justice's court of record, or city court, *other than a city court of record*, revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

Section 7. 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 8. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 3, chapter 11, part 1, and the provisions of Title 3, chapter 11, part 1, apply to [sections 3 and 4].

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved March 23, 2011

CHAPTER NO. 39

[SB 46]

AN ACT CLARIFYING PAYMENTS TO AGENTS RETURNING FUGITIVES IN EXTRADITION PROCEEDINGS; AND AMENDING SECTION 46-30-411, MCA.

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

Section 1. Section 46-30-411, MCA, is amended to read:

“46-30-411. Expenses of bringing fugitives back to this state. (1)

When the governor of this state, in the exercise of the authority conferred by Article IV, section 2, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in that state or foreign government, the accounts of the person employed by the governor to bring back the fugitive must be audited by the governor and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may use commercial transportation, aircraft, or motor vehicle to return the fugitive. ~~The~~ *If the fugitive is returned to this state by an officer or employee of the state or of a political subdivision of the state, the agent must be paid travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in returning the fugitive to this state. If the governor’s authorized agent contracts for the performance of the transportation with a person or entity who is not an officer or employee of the state or of a political subdivision of the state, the expenses must be paid in accordance with the rate established by the contracting parties, as approved by the office of the governor.”*

Approved March 23, 2011

CHAPTER NO. 40

[SB 51]

AN ACT ELIMINATING THE REQUIREMENT THAT LEGISLATIVE AUDITOR’S DIVISION STAFF OBSERVE LOTTERY DRAWINGS; AMENDING SECTION 23-7-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 23-7-311, MCA, is amended to read:

“23-7-311. Drawings for and payment of prizes — unclaimed prizes.

(1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings ~~must~~ *may* be witnessed by a professional staff employee of the legislative auditor’s office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director’s staff ~~and a professional staff employee of the legislative auditor’s office~~ prior to and after each public drawing.

(2) The commission may by rule provide for the payment of prizes by ticket or chance sales agents, whether or not the paying agent sold the winning ticket or chance, whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) (a) Except as provided in subsection (3)(b), prizes over \$100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years and in yearly installment payments of not less than \$20,000.

(b) If the commission enters into an agreement under the provisions of 23-7-202(8) to participate in a game for prizes of over \$100,000 that requires

payment periods of more than 20 years or yearly installment payments of less than \$20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order."

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

Approved March 23, 2011

CHAPTER NO. 41

[SB 53]

AN ACT ALLOWING AN AGENCY TO NOTIFY AN INTERESTED PERSON, WITH THE CONSENT OF THAT PERSON, OF THE AVAILABILITY ON THE AGENCY'S WEBSITE OF AN ELECTRONIC NOTICE OF PROPOSED RULEMAKING; AMENDING SECTIONS 2-3-301 AND 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-3-301, MCA, is amended to read:

"2-3-301. Agency to accept public comment electronically — dissemination of electronic mail address and documents required — prohibiting fees. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

(a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;

(b) the telephone directory of state agencies published by the department of administration;

(c) any notice of agency existence, purpose, and operations published on the internet world wide web, popularly known as a "website", used by the agency; or

(d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to 2-6-102, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. *Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in 2-4-302(2)(a)(ii).* An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, “agency” means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government.”

Section 2. 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)(d). 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)~~ (2)(a)(i) 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) (i) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. ~~Within~~ *Except as provided in subsection (2)(a)(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)(b).

(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 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).

(b) 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.

(c) 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 access system or other electronic communications system available to the public.

(d) (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)(d) 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)(d)(i) has been published as required in subsection ~~(2)(a)~~ (2)(a)(i), a copy of the published notice must be sent to the primary sponsor contacted under this subsection (2)(d).

(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)(a) and provide them an opportunity to place their names on the list.

(8) (a) For purposes of contacting primary sponsors under ~~subsections (2)(a) and subsection (2)(d)~~, 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 shall update the contact information whenever the secretary of state receives corrected information from the legislator. 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).”

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

Approved March 23, 2011

CHAPTER NO. 42

[SB 60]

AN ACT ALLOWING A PARENT, GUARDIAN, OR CONSERVATOR TO REQUEST A SECURITY FREEZE FOR A MINOR, INCAPACITATED PERSON, OR PROTECTED PERSON WITH RESPECT TO CREDIT REPORTS; AND AMENDING SECTIONS 30-14-1726 AND 30-14-1727, MCA.

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

Section 1. Section 30-14-1726, MCA, is amended to read:

“30-14-1726. Definitions. As used in 30-14-1726 through 30-14-1736, the following definitions apply:

(1) “Consumer” means an individual, *a parent or guardian in the case of a minor or of an incapacitated person as defined in 72-5-101, or a conservator in the case of a protected person as defined in 72-5-101.*

(2) “Consumer reporting agency” means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing credit reports to a third party and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.

(3) “Credit report” means any written, oral, or other communication of any information by a consumer reporting agency:

(a) bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(b) that is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for:

(i) credit to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) any other purpose authorized under 15 U.S.C. 1681(b).

(4) "Person" means an individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(5) "Proper identification" means information sufficient to verify identity.

(6) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(7) (a) "Security freeze" means a notice that:

(i) is placed in a consumer's credit report at the request of the consumer;

(ii) is subject to exceptions and exemptions provided in 30-14-1734;

(iii) prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or credit score without the express authorization of the consumer, as provided in 30-14-1729.

(b) A security freeze does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report."

Section 2. Section 30-14-1727, MCA, is amended to read:

"30-14-1727. Placement of security freeze. (1) A consumer may elect to place a security freeze on the consumer's own credit report by making a request:

(1)(a) in writing by regular or certified mail to a consumer reporting agency at an address designated by the consumer reporting agency to receive the request; or

(2)(b) directly to the consumer reporting agency through a secure electronic connection specified by the consumer reporting agency by January 31, 2009.

(2) A consumer, acting in the capacity of a parent or guardian in the case of a minor or of an incapacitated person as defined in 72-5-101 or a conservator in the case of a protected person as defined in 72-5-101, may request that a consumer reporting agency place a freeze on the credit report of the minor or incapacitated or protected person by making a request in writing to the consumer reporting agency at an address designated by the consumer reporting agency to receive the request."

Approved March 23, 2011

CHAPTER NO. 43

[SB 65]

AN ACT MODIFYING THE PROCESS FOR REVISING THE STATE ENERGY POLICY; AMENDING SECTION 90-4-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 90-4-1003, MCA, is amended to read:

"90-4-1003. Energy policy development process. (1) (a) ~~Except as provided for in subsection (1)(b), each interim~~ *At the first interim committee meeting held during each interim, the energy and telecommunications interim committee established in 5-5-230 shall review the state energy policy and, if determined necessary by the committee, discuss at future meetings issues to be included in a revised policy and recommend potential changes to the state energy policy, pursuant to subsection (2).*

~~(b) During the 2009-2010 interim, the committee shall consult with a broad representation of stakeholders, including appropriate state agencies and the public, and focus on the following issues to be included in a revised state energy policy:~~

- ~~(i) increasing the supply of low-cost electricity with coal-fired generation;~~
- ~~(ii) rebuilding and extending electric transmission lines;~~
- ~~(iii) maximizing state land use for energy generation;~~
- ~~(iv) increasing energy efficiency standards for new construction;~~
- ~~(v) promoting conservation;~~
- ~~(vi) promoting energy efficiency incentives;~~
- ~~(vii) promoting alternative energy systems;~~
- ~~(viii) reducing regulations that increase ratepayers' energy costs; and~~
- ~~(ix) integrating wind energy.~~

~~(2) Except as provided in subsection (1)(b), the If the committee decides to discuss issues to be included in a revised policy and recommend potential changes, it shall consult with a broad representation of stakeholders, including appropriate state agencies and the public, in developing the issues to be included within the proposed, revised state energy policy each interim.~~

~~(3) Each biennium, the If revisions to the state energy policy are proposed by the committee, then before September 15 of the year preceding a legislative session, the committee shall forward its recommendations for a proposed revised state energy policy to the legislature and to the appropriate state agencies for adoption.~~

(4) In carrying out its responsibilities under this section, the committee shall use its interim budget, as allocated by the legislative council, and rely on the input of locally available experts and staff research to accomplish its responsibilities.”

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

Approved March 23, 2011

CHAPTER NO. 44

[SB 73]

AN ACT PROVIDING THAT THE RIGHTS AND OBLIGATIONS OF A STATE-OPERATED ADULT HEALTH CARE FACILITY PROVIDING SPECIAL EDUCATION SERVICES TO ITS RESIDENTS ARE EQUIVALENT TO THE OBLIGATIONS OF A SCHOOL DISTRICT; AND AMENDING SECTIONS 20-7-401 AND 20-7-411, MCA.

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

Section 1. Section 20-7-401, MCA, is amended to read:

“20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Child with a disability” means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having a disability and who because of the disability needs special education and related services.

(2) “Free appropriate public education” means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(3) "Related services" means services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education.

(4) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(5) "*State-operated adult health care facility providing special education services to its residents*" means the Montana state hospital, the Montana developmental center, the Montana mental health nursing care center, or the Montana chemical dependency treatment center.

(5)(6) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child."

Section 2. Section 20-7-411, MCA, is amended to read:

"20-7-411. Regular classes preferred — obligation to establish special education program. (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive environment. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district *or a state-operated adult health care facility providing special education services to its residents* shall provide or establish and maintain a special education program for each child with a disability who is 6 years of age or older and under 19 years of age.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability who is 3 years of age or older and under 7 years of age.

(4) (a) The board of trustees of a school district *or a state-operated adult health care facility providing special education services to its residents* may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.

(b) Programs established pursuant to subsection (4)(a) do not obligate the state, ~~or~~ a school district, *or a state-operated adult health care facility providing special education services to its residents* to offer regular educational programs to a similar age group unless specifically provided by law.

(5) The board of trustees of a school district *or a state-operated adult health care facility providing special education services to its residents* may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, ~~or~~ by participating in a regional services program, *or by contracting for services from qualified providers. A state-operated adult health care facility providing special education services to its residents may also meet its obligation by coordinating appropriate services with the resident's school district of residence, the local high school district, or both.*

(6) The trustees of a school district *or a state-operated adult health care facility providing special education services to its residents* shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids."

Approved March 23, 2011

CHAPTER NO. 45

[SB 95]

AN ACT REVISING THE EXEMPTION OF AN ACKNOWLEDGMENT BY A NOTARY FROM THE STANDARDS FOR DOCUMENTS TO BE RECORDED BY COUNTY CLERKS; AND AMENDING SECTION 7-4-2636, MCA.

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

Section 1. Section 7-4-2636, MCA, is amended to read:

"7-4-2636. Standards for recorded documents — exemptions. (1) Unless accompanied by the appropriate fee required in 7-4-2637, a document submitted for recording that conveys an interest in real property must:

(a) be legibly printed or typed in black ink in at least 10-point typeface on white paper of not less than 20-pound weight, each page of which must be separated and have dimensions of either 8 1/2 x 11 inches or 8 1/2 x 14 inches;

(b) provide the names of the parties to the conveyance on the first or second page of any document with more than one page;

(c) provide a description of the property;

(d) have all signatures, initials, dates, handwriting, or notary stamps in blue or black ink;

(e) except as provided in subsection (1)(f) and except for page numbers or other designations, have margins that are clear of all markings in the following dimensions:

(i) at least 3 inches at the top of the first page and at least 1 inch at the top of the second and any subsequent pages;

(ii) at least 1 inch on the bottom of each page;

(iii) at least 1/2 inch on the sides of each page; and

(f) include the name and mailing address of the person to whom the document is to be returned in the margin in the upper left-hand corner of the first page within the 3-inch top margin and between the 1/2-inch side margins of each document submitted and may include legibly printed or typed transactional information.

(2) Unless accompanied by the fee required in 7-4-2637, all other documents submitted for recording must meet the requirements of subsections (1)(a), (1)(e), and (1)(f).

(3) (a) Except as provided in subsection (3)(b), only documents submitted for recording and filing that conform to the provisions of subsection (1) or (2) are considered standard documents for the purposes of 7-4-2637.

(b) Documents that are acknowledged as having been executed prior to April 28, 2007, must be accepted for recording and considered standard documents, regardless of whether they conform to the provisions of subsection (1) or (2).

(4) (a) An acknowledgment by a notary is exempt from the color, typeface, and font requirements of this section. *If the notarial seal is made by impression of an embosser, the seal is exempt from the margin requirements of this section.*

(b) An officially certified court or other government document, whether from an in-state or out-of-state office, is exempt from the provisions of this section.”

Approved March 23, 2011

CHAPTER NO. 46

[SB 152]

AN ACT INCREASING THE PENALTY FOR SEXUAL ASSAULT FOR SECOND AND SUBSEQUENT OFFENSES; AND AMENDING SECTION 45-5-502, MCA.

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

Section 1. Section 45-5-502, MCA, is amended to read:

“45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) (a) ~~A person convicted of~~ *On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.*

(b) *On a second conviction for sexual assault, the offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.*

(c) *On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.*

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

(4) An act “in the course of committing sexual assault” includes an attempt to commit the offense or flight after the attempt or commission.

(5) (a) Subject to subsections (5)(b) and (5)(c), consent is ineffective under this section if the victim is:

(i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(ii) less than 14 years old and the offender is 3 or more years older than the victim;

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.

(c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.”

Approved March 23, 2011

CHAPTER NO. 47

[HB 58]

AN ACT DESIGNATING THE PEOPLES CREEK MINIMUM FLOW ACCOUNT WITHIN THE FORT BELKNAP-MONTANA COMPACT AS A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-20-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-20-1007, MCA, is amended to read:

“85-20-1007. Peoples Creek minimum flow account. (1) A ~~private purpose trust~~ *state special revenue* account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds ~~appropriated by the state~~ for efficiency improvements and bypass structures for irrigation upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the Reservation for the purpose of improving minimum stream flow.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover the cost of construction of improvements as agreed to in the state and federal cost-share negotiations.”

Section 2. Effective date. [This act] is effective on passage and approval.
Approved March 24, 2011

CHAPTER NO. 48

[HB 268]

AN ACT ELIMINATING THE REFERENCE TO A REASONABLE AMOUNT WITH RESPECT TO A SERVICE CHARGE FOR ISSUING A BAD CHECK, DRAFT, CONVERTED CHECK, ELECTRONIC FUNDS TRANSFER, OR ORDER; AND AMENDING SECTION 27-1-717, MCA.

WHEREAS, all but three states, Montana, Oregon, and Texas, have removed the reasonableness standard from their check collection fee laws; and

WHEREAS, the people that often suffer the most from bad checks are the merchants that take the checks; and

WHEREAS, without a financial incentive to collect bad checks, some merchants may stop accepting checks as payment and not being able to write a check would create a substantial hardship for many consumers.

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

Section 1. Section 27-1-717, MCA, is amended to read:

“27-1-717. Issuing a bad check, draft, converted check, electronic funds transfer, or order or stopping payment — civil liability — statute of limitations. (1) A person who issues a check, draft, converted check, electronic funds transfer, or order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, converted check, electronic funds transfer, or order is issued, or the payee’s assignee, if the check, draft, converted check, electronic funds transfer, or order is:

(a) dishonored for lack of funds or credit or because the issuer does not have an account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, converted check, electronic funds transfer, or order is liable to the payee or the payee’s assignee for a service charge in a ~~reasonable~~ *an* amount, not greater than \$30. The payee or the payee’s assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee’s assignee and mailed to the address shown on the check, draft, converted check, or order or to the issuer’s last-known address. The demand must state that the issuer is required to pay the value of the check, draft, converted check, electronic funds transfer, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of \$100 or three times the amount for which the check, draft, converted check, electronic funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted check, electronic funds transfer, or order by more than \$500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee’s assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3). The statute of limitations for the liability created under this section is 6 years from the date of the demand under subsection (2).

(7) This section applies to all checks, drafts, converted checks, electronic funds transfers, and orders, including those electronically presented for payment.

(8) Making partial payments of amounts owed under this section or entering into an agreement for paying in whole or in part amounts owed under this section does not waive any right that the payee or the payee's assignee may have under this section. Once a demand required under this section is made, the demand is not required to be repeated upon partial payment of amounts owed under this section."

Approved March 24, 2011

CHAPTER NO. 49

[SB 64]

AN ACT GENERALLY REVISING BANKING LAWS; REVISING ACCESS TO CERTAIN BANK HOLDING COMPANY RECORDS BY THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS OF THE DEPARTMENT OF ADMINISTRATION; ALLOWING DE NOVO INTERSTATE BANK BRANCHING THAT IS CONSISTENT WITH FEDERAL LAW; CLARIFYING INTERSTATE BANKING BY THE ACQUISITION OF EXISTING BANKS; GRANTING THE DEPARTMENT OF ADMINISTRATION RULEMAKING AUTHORITY; AND AMENDING SECTIONS 32-1-220, 32-1-372, AND 32-1-381, MCA.

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

Section 1. Section 32-1-220, MCA, is amended to read:

"32-1-220. Access to holding companies and affiliated entities. The division may review the books and affairs of a bank holding company operating under the Bank Holding Company Act of 1956 during the course of a ~~regularly scheduled~~ safety and soundness examination of the bank holding company's subsidiary bank to the extent that the records pertain to the operations and financial condition of the subsidiary bank or to the holding company's indebtedness. The authority granted in this section does not authorize the division to regulate or charge assessments to a bank holding company. ~~whenever serious regulatory concerns arise that could jeopardize the safety and soundness of the particular subsidiary being examined. The purpose of the authority granted in this section is to resolve serious regulatory concerns that~~

arise during the examination from bank holding company transactions with the subsidiary being examined. The authority granted in this section does not authorize a review of the holding company as a standard procedure when the division has no serious regulatory concerns over transactions with the subsidiary being examined.”

Section 2. Section 32-1-372, MCA, is amended to read:

“32-1-372. Branch bank. (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. The formation and operation of a branch bank *in this state, wherever located*, by a bank organized under the laws of this state require the prior approval of the department. A bank organized under the laws of this state may establish, acquire, or operate a branch bank or other office outside this state if approved by the department and if permitted by the laws of the jurisdiction where the branch bank or office is to be located.

(2) A branch bank may but is not required to offer all services and conduct all business authorized to be offered or conducted by the bank.

(3) A bank authorized to do banking business in this state may use a satellite terminal, as defined in 32-6-103, at any location permitted by the Montana Electronic Funds Transfer Act.

(4) A bank may continue to maintain and operate all branch banks and other banking offices, including detached facilities, that are in existence or authorized on July 1, 1997, without further consent, authorization, or approval of the department or the board. All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.

(5) A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

~~(6) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. However, this section may not be interpreted to authorize de novo interstate bank branching and may not be interpreted to authorize a bank not located in this state to establish, acquire, or operate a branch bank in this state. With the prior approval of the appropriate federal regulator and state chartering authority, a bank that is not organized under the laws of this state may establish and operate a de novo branch in this state under the same terms that would apply to a bank organized under the laws of this state seeking approval from the department to establish and operate a de novo branch in this state.~~

~~(7) A bank that is not organized under the laws of this state that applies to the appropriate federal regulator and state chartering authority under subsection (6) to establish and operate a de novo interstate branch in Montana shall simultaneously file a copy of the application with the department for notification purposes.~~

~~(8) The department is authorized to adopt rules to implement this section.”~~

Section 3. Section 32-1-381, MCA, is amended to read:

“32-1-381. Purpose. (1) The purpose of 32-1-381 through 32-1-384 is to:

~~(a)~~(1) authorize interstate banking by the acquisition of existing banks within the framework of the “Douglas amendment” to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 through 1850), as amended;

~~(b)~~(2) provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks; and

(e)(3) conform Montana statutes with the provision of the Rieggle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1994. Any inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be resolved in favor of Public Law 103-328.

~~(2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions or transactions authorized in 32-1-381 through 32-1-384.~~

Approved March 24, 2011

CHAPTER NO. 50

[SB 69]

AN ACT NAMING THE FIRST FLOOR OF THE EAST WING OF THE CAPITOL BUILDING IN HONOR OF FORMER REPRESENTATIVE FRANCIS BARDANOUE; AMENDING SECTION 2-17-808, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, Francis Bardanoue was a Blaine County farmer-rancher from near Harlem whose service in the Montana Legislature spanned 5 decades; and

WHEREAS, he was first elected to the Montana House of Representatives in 1958 and reelected 17 times; and

WHEREAS, until his retirement in January 1995, he served a total of 18 sessions, 10 as the tight-fisted chairman of the powerful House Appropriations Committee; and

WHEREAS, he was instrumental in establishing and transforming many of the institutions that most Montanans simply take for granted; and

WHEREAS, he secured passage of legislation creating the Board of Investments, but only after traveling at his own expense to several states to study their systems; and

WHEREAS, he spent time in each of the state mental and hospital institutions to experience them firsthand and worked hard for better conditions, becoming the champion for the deinstitutionalization of many patients warehoused at the state hospitals at Warm Springs and Boulder; and

WHEREAS, he pressed for funding of a full-time professional staff for the Legislative Council, replacing a system in which lobbyists and corporate lawyers often drafted legislation; and

WHEREAS, he led the charge for the creation of the office of the Legislative Fiscal Analyst that gave the Legislature the power to independently analyze and set budget policy and priorities for the state, and was fond of telling stories about how funding for programs had previously been set by relying on individual legislators keeping running totals on slips of paper they kept in their vest pockets and where analyses of any type did not exist and justifications were largely a product of friendships; and

WHEREAS, of all of his many accomplishments, he often said he had but one regret in life, that he never got to ride his horse over the beautiful landscape that encompassed the prison ranch at Deer Lodge; and

WHEREAS, he was still on the advisory board for the Montana State Prison when he died in March 2002 and, while in the Legislature, played a major role in

turning the ranch from a business that consistently lost money to a viable business enterprise; and

WHEREAS, Francis Bardanouve was a humble man who never cared much for recognition and raised modesty to an art form; if he was aware of this proposal, he would likely kick up a fuss; and

WHEREAS, he was a compassionate man who always fretted about the well-being of his cattle, worrying about whether they had enough water and grass; and

WHEREAS, Representative Bardanouve was an ardent advocate of education and often demonstrated his dedication to and faith in the efficacy of higher education; and

WHEREAS, he was fearless and had a steel-trap mind; he was blessed with an earthy commonness that is so uncommon among most elected officials; and

WHEREAS, he constantly reminded his colleagues never to forget where they came from and not to let their positions go to their heads, commenting that "It never fails. All the sessions I have served in Helena, I go back to Harlem and someone passes me on the street and says, "Francis, where have you been all winter? Did you go down south?"; and

WHEREAS, Francis overcame a severe speech impediment after years of having been teased and taunted, disappearing without explanation in the winter of 1946 and going to Pennsylvania to have surgery on his cleft pallet; and

WHEREAS, the most remarkable part of his transformation into an inspirational and persuasive speaker on the floor of the House of Representatives was when he met and later married Venus, his speech therapist, who was the love of his life and who at age 50 made him a stepfather to her three children; and

WHEREAS, Representative Bardanouve's reputation and legend epitomize everything that is good and honorable about public service; his life and contributions serve to remind us that very ordinary Montanans can overcome adversity and perform remarkable feats; and

WHEREAS, this recommendation is a small commemoration for all that Francis Bardanouve, a beloved son of Montana, contributed during his time in office and the examples he set for current and future public servants.

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

Section 1. 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; ~~and~~
- (h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors; *and*

(i) *a plaque commemorating former representative Francis Bardanoue and lettering naming the first floor of the east wing of the capitol in honor of Francis Bardanoue.*

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

- (a) the statues of Thomas Francis Meagher and Lady Liberty;
- (b) the plaques commemorating:
 - (i) Donald Nutter;
 - (ii) President George H. W. Bush; and
 - (iii) American prisoners of war and personnel of the United States armed services missing in action;
- (c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;
- (d) the Montana centennial square; and
- (e) the monument of the ten commandments.

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

- (a) the statue by Robert Scriver entitled "symbol of the pros";
- (b) the monuments to the liberty bell, the veterans' and pioneer memorial building—landscape beautification project, Montana veterans, ~~and~~ 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; and
- (e) the plaque and Lou Peters award commemorating Karl Ohs.

(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).”

Section 2. Effective date. [This act] is effective March 18, 2012.

Approved March 24, 2011

CHAPTER NO. 51

[SB 165]

AN ACT PROVIDING THAT A BOARD REGULATING A PROFESSION OR OCCUPATION MAY NOT ENFORCE STANDARDS AND RULES IN A MANNER THAT DISCRIMINATES AGAINST ANY PERSON LICENSED BY THE BOARD WITH REGARD TO HOW THE STANDARDS AND RULES ARE APPLIED TO OTHER PERSONS LICENSED BY THE BOARD OR IN A MANNER THAT RESTRAINS TRADE OR COMPETITION EXCEPT WHEN NECESSARY FOR PUBLIC HEALTH AND SAFETY; AND AMENDING SECTION 37-1-131, MCA.

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

Section 1. Section 37-1-131, MCA, is amended to read:

“37-1-131. Duties of boards — quorum required. (1) A quorum of each board within the department shall:

(a) (i) set and enforce standards and *adopt and enforce* rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board’s jurisdiction; *and*

(ii) *apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board and that does not restrain trade or competition unless necessary to protect public health and safety;*

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board’s jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers’ compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board’s pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

Approved March 24, 2011

CHAPTER NO. 52

[SB 186]

AN ACT PROVIDING THAT THE INITIAL LIMIT FOR A POLICY OR CERTIFICATE OF FUNERAL INSURANCE IS UP TO \$15,000; AMENDING SECTION 33-20-1501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-20-1501, MCA, is amended to read:

"33-20-1501. Funeral insurance. (1) (a) "Funeral insurance" means an insurance policy or certificate that requires a one-time payment or the payment of premiums to provide for the costs of a funeral and burial for the policyholder or a named individual.

(b) Funeral insurance is a type of life insurance provided for in 33-1-208 and regulated under Title 33, chapter 20. The terms "burial insurance" and "preneed funeral insurance" have the same meaning as funeral insurance.

(c) Funeral insurance may be:

(i) included in a life insurance policy. This form of funeral insurance may not be sold by or through a person licensed under Title 37, chapter 19, regardless of whether a person licensed under Title 37, chapter 19, also has an insurance producer's license in this state.

(ii) a limited policy or certificate with a guaranteed death benefit that may be sold by:

(A) a licensed insurance producer; or

(B) a person licensed under Title 37, chapter 19, parts 3 and 4, if that person also is licensed as a life insurance producer in this state.

(d) Unless otherwise provided by Title 33, chapter 20, the *initial* policy or certificate limit under subsection (1)(c)(ii) is up to \$15,000.

(2) Funeral insurance for the purposes of Title 33 is not a fixed amount prepaid into a trust or escrow fund, called a prearranged funeral plan, as described in 37-19-827, or a preneed arrangement, as defined in 37-19-101, and regulated under Title 37, chapter 19.

(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary, including but not limited to a funeral director, mortician, mortuary, or undertaker, if the applicant has an insurable interest in the life of the insured; and

(c) subject to the provisions of 33-20-1502 and this section, the beneficiary may use the proceeds for any purpose.

(4) The funeral insurance policy must state that the insurance company shall, as a condition of paying the benefits of the insurance policy, require from the funeral director, mortician, mortuary, or undertaker:

(a) a certified copy of the certificate of death of the insured or other evidence of death satisfactory to the insurance company; and

(b) a certificate of completion signed by the funeral director, mortician, or undertaker stating that the funeral director, mortician, undertaker, or mortuary has delivered all the goods and performed all the services contracted for, by, or on behalf of the insured.

(5) (a) Notwithstanding the provisions of 33-15-414, the funeral insurance policy must contain an assignability clause that allows the policy or certificate to be assigned or otherwise transferred to another funeral director, mortician, mortuary, or undertaker licensed to do business in this state in conjunction with the assumption of the contractual obligation to provide the funeral goods or services to the extent permitted by state or federal law for the purpose of the insured's eligibility for supplemental security income benefits, medicaid, or other public assistance benefits.

(b) The assignability clause may not be used by a funeral director, mortician, mortuary, or undertaker to pledge, assign, transfer, borrow from, or otherwise encumber an insurance policy assigned to it for purposes of purchasing funeral goods or services prior to delivering all of the goods and performing all of the services contracted for, by, or on behalf of the insured.

(6) After the death of a person who at any time received medicaid benefits, a funeral director, mortician, mortuary, undertaker, or other person, including but not limited to the decedent's spouse, heir, devisee, or personal representative, who is the beneficiary of funeral insurance in excess of \$5,000 in value designated to pay for the disposition of the medicaid recipient's remains

and for related expenses shall, after paying for the disposition and related expenses, pay all remaining funds to the department of public health and human services within 30 days following the receipt of the funeral insurance death benefit. The funds must be paid to the department regardless of any provision in a written contract, insurance policy, or other agreement entered into on or after January 1, 2008, directing a different disposition of the funds. Funds paid to the department under this section are not considered to be property of the deceased medicaid recipient's estate, and the provisions of 53-6-167 do not apply to recovery of the funds by the department.”

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

Approved March 24, 2011

CHAPTER NO. 53

[HB 23]

AN ACT RELATING TO PRIMARY SPONSOR CONTACT REQUIREMENTS FOR PURPOSES OF RULEMAKING; ALLOWING THE SECRETARY OF STATE TO USE LEGISLATOR CONTACT INFORMATION PROVIDED BY THE LEGISLATIVE SERVICES DIVISION; CLARIFYING THE METHODS OF PRIMARY SPONSOR CONTACT FOR THE PURPOSES OF RULEMAKING; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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)(d). 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. 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)(b). 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 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).

(b) 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.

(c) 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 access system or other electronic communications system available to the public.

(d) (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)(d) 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)(d)(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)(d).

(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)(a) and provide them an opportunity to place their names on the list.

(8) (a) For purposes of contacting primary sponsors under ~~subsections (2)(a) and subsection (2)(d)~~, 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.*

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

Approved March 25, 2011

CHAPTER NO. 54

[HB 53]

AN ACT CONSOLIDATING MANDATED BENEFITS FOR THE STATE EMPLOYEE GROUP BENEFIT PLAN AND MONTANA UNIVERSITY SYSTEM BENEFIT PLAN UNDER TITLE 2, MCA; AND AMENDING SECTIONS 2-18-704, 33-1-102, 33-22-129, 33-22-134, AND 33-22-136, MCA.

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

Section 1. 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, ~~as amended~~, 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, ~~42 U.S.C. 1395, as amended~~, 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, 42 U.S.C. 1395, as amended.

(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 treatment of inborn errors of metabolism, as provided for in 33-22-131.

~~(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.~~

(9)(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 ~~(9)(a)~~ (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection ~~(9)~~ (8).

(d) For purposes of this subsection ~~(9)~~ (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 ~~(9)(b)~~ (8)(b) and delivered by a physician or a health care professional supervised by a physician.

~~(10)(9) (a) Except as provided in subsection (10)(b), upon~~ Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must, ~~as provided in 33-22-152,~~ continue to provide coverage for any ~~unmarried~~ dependent, as defined in ~~33-22-140(5)(b) the insurance contract or plan,~~ until the dependent reaches 25 26 years of age or marries, whichever occurs first. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in ~~33-22-140(5)(b) the insurance contract or plan,~~ may be required to be paid by the insured and not by the employer.

~~(b) An insurance contract or plan issued under this part for the state employee group insurance program and the university system group insurance program is not subject to subsection (10)(a).~~

~~(11)(10)~~ Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract’s or plan’s cancer screening coverages must be provided to a prospective group or plan member.

(11) *The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.*

(12) (a) *The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.*

(b) *Coverage must include a \$250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.*

(c) *The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.*

(d) *Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.*

(e) *Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.*

(f) *This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.*

(13) (a) *The state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.*

(b) *The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:*

(i) *the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the Montana university system group benefits plans or if the plans have not received timely premium payments;*

(ii) *the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or*

(iii) *the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law.”*

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 or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) ~~Except as otherwise provided in Title 33, chapter 22, this~~ This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the *Montana university system group benefits plans established in Title 20, chapter 25, part 13.*

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, 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.”

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 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) 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, 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.

(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 ~~the state employee group insurance program, the university employee group insurance program, or 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) ~~The state employee group insurance program, the university employee group insurance program, or any~~ 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 33-22-134, MCA, is amended to read:

“33-22-134. Postmastectomy care. Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, also 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. This section also applies to ~~the state employee group insurance program, the university system employee group insurance program,~~ any employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974.”

Section 5. Section 33-22-136, MCA, is amended to read:

“33-22-136. Insurance for spouse and dependents of deceased peace officer, game warden, or firefighter. (1) Any insurer, health service corporation, or health maintenance organization issuing group disability 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. This section also applies to ~~a state employee group insurance program, a university system group insurance program,~~ an employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement not regulated by the Employee Retirement Income Security Act of 1974 that provides coverage for a peace officer, game warden, firefighter, or volunteer firefighter. Except as provided in subsection (2), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of 33-22-523(2) and (3). The provisions of this subsection are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(2) A disability insurance issuer subject to the provisions of subsection (1) may discontinue or not renew the coverage of a spouse or dependent only if:

(a) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the disability insurance coverage or if the disability insurer has not received timely premium payments;

(b) 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

(c) the disability insurance issuer is ceasing to offer coverage in the group disability market in accordance with applicable state law.”

Section 6. Contingent voidness. (1) If provisions of Public Law 111-148, the Patient Protection and Affordable Care Act, or Public Law 111-152, the Health Care and Education Reconciliation Act, that mandate that a health insurance plan, such as a plan governed under 2-18-704, provide coverage for a dependent until the dependent reaches 26 years of age are amended, repealed, or determined by the U.S. supreme court to be unconstitutional or unenforceable, then the amendment in 2-18-704(9), as amended by [this act], striking “25” and inserting “26” is void as of the effective date of the amendment, repeal, or court decision.

(2) Upon determination by the department of administration that the contingency described in subsection (1) has been met, the department shall notify the code commissioner.

Approved March 25, 2011

CHAPTER NO. 55

[HB 62]

AN ACT REPEALING PROCEDURES FOR CHALLENGING MUNICIPAL SEWER SYSTEM RATES BY FILING A COMPLAINT WITH THE PUBLIC SERVICE COMMISSION; REPEALING SECTION 7-13-4208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. The following section of the Montana Code Annotated is repealed:

7-13-4208. Procedure to challenge rates.

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

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

Approved March 25, 2011

CHAPTER NO. 56

[HB 78]

AN ACT CLARIFYING THE DEFINITION OF "LOCAL OWNERS" IN THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; AMENDING SECTION 69-3-2003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(4) "Community renewable energy project" means an eligible renewable resource that:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

(5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(7) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

(9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.

(10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that:

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; or

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells;

(i) the renewable energy fraction from the sources identified in subsections (10)(a) through (10)(j) of electricity production from a multiple-fuel process with fossil fuels; and

(j) compressed air derived from any of the sources in this subsection (10) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

(11) "Local owners" means:

(a) Montana residents; ~~or entities composed of~~

(b) *general partnerships of which all partners are Montana residents;*

~~(b)(c) Montana small businesses; business entities organized under the laws of Montana that:~~

~~(i) have less than \$50 million of gross revenue;~~

~~(ii) have less than \$100 million of assets; and~~

~~(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;~~

~~(e)(d) Montana nonprofit organizations;~~

~~(d)(e) Montana-based tribal councils;~~

~~(e)(f) Montana political subdivisions or local governments;~~

~~(f)(g) Montana-based cooperatives other than cooperative utilities; or~~

~~(g)(h) any combination of the individuals or entities listed in subsections (11)(a) through ~~(11)(f)~~ (11)(g).~~

(12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(15) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

(16) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

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

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

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

Approved March 25, 2011

CHAPTER NO. 57

[HB 79]

AN ACT ESTABLISHING A STATUTORY APPROPRIATION FOR CERTAIN INTEREST AND INCOME IN THE BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT TO IMPLEMENT THE WATER RIGHTS COMPACT; AMENDING SECTIONS 17-7-502 AND 85-20-1504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; 85-20-1504; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to

pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 2. Section 85-20-1504, MCA, is amended to read:

"85-20-1504. Blackfoot Tribe water rights compact mitigation account — use. (1) There is an account within the state special revenue fund called the Blackfoot 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.

(2) The Blackfoot 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 Blackfoot 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 Blackfoot Tribe's water rights under a water rights compact pursuant to 85-2-702 quantifying the water rights of the Blackfoot Tribe; and

(b) implementation of the water rights compact among the Blackfoot Tribe, the state, and the United States and any associated agreements as may be specified in the compact or agreements.

~~(3) (a) The department may expend up to \$500,000 of the account to conduct preliminary feasibility studies and an associated environmental review for water compact purposes.~~

~~(b) 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)(b) for the purposes described in subsection (2)(b). This money is statutorily appropriated, as provided in 17-7-502.~~

(4) (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 \$10 million in this account must be held in escrow. The department shall negotiate the terms of an escrow agreement.

(5) Except as provided in subsection (3), funds from this account may not be disbursed unless a water rights compact among the Blackfoot Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfoot Tribe."

Section 3. Effective date. [This act] is effective on passage and approval.
Approved March 25, 2011

CHAPTER NO. 58

[HB 81]

AN ACT CREATING A SECURITIES RESTITUTION ASSISTANCE FUND; PROVIDING FOR ORDERS AND JUDGMENTS REQUIRING PAYMENT INTO THE FUND; SPECIFYING A MAXIMUM AWARD AND ELIGIBILITY REQUIREMENTS FOR CLAIMANTS; PROVIDING PENALTIES FOR FALSE, INCOMPLETE, OR MISLEADING APPLICATIONS; GRANTING RULEMAKING AUTHORITY TO THE SECURITIES COMMISSIONER; AMENDING SECTIONS 17-7-502, 30-10-103, AND 30-10-305, MCA; 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. Short title. [Sections 1 through 8] may be cited as the "Securities Restitution Assistance Fund Act of Montana".

Section 2. Purpose. The purpose of [sections 1 through 8] is to provide restitution assistance to victims who:

(1) were awarded restitution in a final order issued by the commissioner or were awarded restitution in the final order in a legal action initiated by the commissioner; and

(2) have not received the full amount of restitution ordered before the application for restitution assistance is due.

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

(1) "Claimant" means a person who files an application for restitution assistance under this part on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Department" means the office of the securities commissioner as established in 2-15-1901.

(3) "Final order" means a final order issued by the commissioner or a final order in a legal action initiated by the commissioner.

(4) "Fund" means the securities restitution assistance fund created by [section 4].

(5) "Securities violation" means a violation of Title 30, chapter 10, and any related administrative rules.

(6) "Victim" means a person who was awarded restitution in a final order.

Section 4. Creation of securities restitution assistance fund. (1) There is an account in the state special revenue fund to the credit of the commissioner for use only for securities restitution assistance. This account may be referred to as the "securities restitution assistance fund" or "fund". The money in the fund is statutorily appropriated, as provided in 17-7-502, to the commissioner for the purposes provided in subsection (4).

(2) (a) The fund consists of amounts received by the commissioner from persons who have committed securities violations and from persons who have voluntarily contributed to the fund.

(b) Amounts received by the commissioner for deposit in the fund do not include administrative penalties or fines imposed under Title 30, chapter 10, and as referenced under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(c) The amounts received for the fund may not be placed in the general fund.

(3) Amounts received by the commissioner for deposit in the fund must be promptly turned over to the state treasurer for deposit in the fund created under subsection (1).

(4) The fund may be used by the commissioner only to pay awards of restitution assistance under [sections 1 through 8].

Section 5. Eligibility. (1) The following victims are eligible for restitution assistance:

(a) a natural person who is a resident of Montana; or

(b) a person, other than a natural person, domiciled in Montana.

(2) The commissioner may not award securities restitution assistance under [sections 1 through 8]:

(a) to more than one claimant per victim;

(b) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the fund is due; or

(c) if there was no award of restitution in the final order.

(3) If an award of restitution in a final order is overturned on appeal, the commissioner may not award restitution assistance under [sections 1 through 8].

(4) If, after the commissioner has made a securities restitution assistance award from the fund under [sections 1 through 8], the restitution award in the final order is overturned on appeal and all legal remedies have been exhausted, the claimant shall forfeit the restitution assistance awarded under [sections 1 through 8].

Section 6. Application for restitution assistance — maximum amount of restitution assistance award. (1) A person who is eligible for restitution assistance under [sections 1 through 8] may submit an application, in a manner and form prescribed by the commissioner, to the department.

(2) An application must be received by the department within 2 years after the deadline for payment of restitution established in the final order.

(3) The maximum award from the fund for each claimant is the lesser of \$25,000 or 25% of the amount of unpaid restitution awarded in a final order.

Section 7. False application — penalties — statute of limitations. (1) A claimant who knowingly files or causes to be filed an application for restitution assistance or documents supporting the application any of which contain false, incomplete, or misleading information in any material aspect shall forfeit all restitution assistance provided from the fund.

(2) The commissioner may levy a fine of up to \$10,000 on a claimant found to be in violation of subsection (1).

(3) A proceeding to determine a violation of subsection (1) must be in accordance with the contested case proceedings in the Montana Administrative Procedure Act, Title 2, chapter 4, parts 6 and 7.

(4) Notwithstanding the statutes of limitations provided in 30-10-305 through 30-10-307, any proceeding to determine a violation of subsection (1) must be initiated within 2 years of the date on which the department discovers the violation or, through the use of reasonable diligence, should have discovered the violation, whichever occurs later. Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, the department may not initiate a proceeding under this subsection more than 5 years after the date of the violation.

Section 8. Rulemaking authority. The commissioner may adopt rules regarding the department's processes for:

- (1) reviewing applications for securities restitution assistance awards;
- (2) making recommendations to the commissioner; and
- (3) suspending awards or making a proportional payment of awards if the fund balance approaches zero.

Section 9. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

- (a) The law containing the statutory authority must be listed in subsection (3).
- (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; [section 4]; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory

appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 10. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter and [sections 1 through 8], unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner ~~of this state provided for in 2-15-1901.~~

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) “Commodity futures trading commission” means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) “Commodity investment contract” means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) “Commodity option” means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) “Federal covered adviser” means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) ~~The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(e)(i), (11)(e)(ii), (11)(e)(iii), (11)(e)(iv), (11)(e)(v), (11)(e)(vi), (11)(e)(vii), or (11)(e)(ix). A federal covered adviser is not an investment adviser as defined in subsection (11).~~

(9) “Federal covered security” means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) “Guaranteed” means guaranteed as to payment of principal, interest, or dividends.

(11) (a) “Investment adviser” means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter *and [sections 1 through 8]*.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person", ~~for the purpose of parts 1 through 3 of this chapter,~~ means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

- (a) silver;
- (b) gold;
- (c) platinum;
- (d) palladium;
- (e) copper; and
- (f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

(i) an issuer in:
(A) effecting a transaction in a security exempted by 30-10-104(1), ~~(2), through (3); or (8), (9), (10), or through (11);~~

(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any note, stock, treasury stock, bond, commodity investment contract, commodity option, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable shares, investment contract, voting-trust certificate, certificate of deposit for a security, viatical settlement purchase agreement, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease, or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 11. Section 30-10-305, MCA, is amended to read:

"30-10-305. Injunctions and other remedies — limitations on actions. (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that:

(i) remains in effect until 10 days after the ~~hearing~~ *hearings* examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the commissioner is entitled to reasonable ~~attorneys'~~ *attorney* fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against the person under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed \$5,000 per violation upon a person found to have engaged in any act or practice

constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability ~~founded~~ based on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability ~~founded~~ based on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or the commissioner's staff of the facts constituting the violation.

(c) An action may not be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years after the transaction on which the action is based.

(5) *The commissioner in an administrative order requiring the payment of restitution or a court in a judicial order or judgment requiring payment of restitution may include a provision requiring a person determined to have violated any provision of parts 1 through 3 of this chapter to contribute an amount to the securities restitution assistance fund created by [section 4].*"

Section 12. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 30, chapter 10, and the provisions of Title 30, chapter 10, apply to [sections 1 through 8].

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 on passage and approval.

Section 15. Applicability. [This act] applies to final orders issued on or after [the effective date of this act].

Section 16. Termination. [This act] terminates June 30, 2017.

Approved March 25, 2011

CHAPTER NO. 59

[HB 86]

AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; CLARIFYING DEFINITIONS; REVISING STATE RETIREMENT SYSTEM POLICY; AMENDING DUTIES OF AN EMPLOYER; CLARIFYING FAMILY LAW ORDERS; CLARIFYING PAYMENT OF OPTIONAL ALLOWANCES

AND SURVIVOR BENEFITS; CLARIFYING BENEFICIARY DESIGNATIONS; CLARIFYING RESPONSIBILITY FOR CORRECTION OF ERRORS; PROVIDING FOR REPORTING OBLIGATIONS OF A RETIRED MEMBER; AMENDING SECTIONS 19-20-101, 19-20-102, 19-20-203, 19-20-208, 19-20-305, 19-20-405, 19-20-701, 19-20-702, 19-20-703, 19-20-705, 19-20-715, 19-20-717, 19-20-721, 19-20-731, 19-20-733, 19-20-805, 19-20-1001, 19-20-1002, 19-20-1003, AND 19-20-1101, MCA; REPEALING SECTION 19-20-720, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 19-20-101, MCA, is amended to read:

“19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accumulated contributions” means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member’s individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) “Actuarial equivalent” means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) “Average final compensation” means ~~the average of a member’s earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member’s retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b) a member’s highest average earned compensation in 3 consecutive years, determined pursuant to 19-20-805, on which contributions have been made.~~

(4) “Beneficiary” means one or more persons formally designated by a member, ~~or retiree, or benefit recipient~~ to receive a retirement allowance or payment upon the death of the member, ~~or retiree, or benefit recipient except for a joint annuitant.~~

(5) “Benefit recipient” means ~~a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.~~

~~(5)(6)~~ “Creditable service” is that service defined by 19-20-401.

~~(6)(7)~~ (a) “Earned compensation” means, except as limited by ~~subsections (7)(b) and (7)(c) or by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by the service of~~ a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted ~~from the member’s compensation.~~

(b) Earned compensation does not ~~mean include:~~

(i) direct employer premium payments on behalf of members for ~~health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;~~

- (ii) any direct employer payment or reimbursement for:
 - (A) professional membership dues;
 - (B) maintenance;
 - (C) housing;
 - (D) day care;
 - (E) automobile, travel, lodging, or entertaining expenses; or
 - (F) any similar payment for any form of maintenance, allowance, or expenses;
- (iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or
- (iv) any noncash benefit provided by an employer to or on behalf of an employee; *a member*;
- ~~(e)(v) Unless termination pay unless included pursuant to 19-20-716, earned compensation does not include termination pay.~~
- ~~(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.;~~
- ~~(e) Earned compensation does not include:~~
 - ~~(i)(vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);~~
 - ~~(ii)(vii) payment for sick, annual, or other types of leave that is allowed paid to a member and that is prior to termination from employment or accrued in excess of that normally allowed; or~~
 - ~~(iii)(viii) incentive or bonus payments paid to a member that are not part of a series of annual payments; or~~
 - ~~(ix) any similar payment or reimbursement made to or on behalf of a member by an employer.~~
- ~~(c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.~~
- ~~(7)(8) "Employer" means:~~
 - ~~(a) the state of Montana;~~
 - ~~(b) a public school district, as provided in 20-6-101 and 20-6-701;~~
 - ~~(c) the office of public instruction;~~
 - ~~(d) the board of public education;~~
 - ~~(e) an education cooperative;~~
 - ~~(f) the Montana school for the deaf and blind, as described in 20-8-101;~~
 - ~~(g) the Montana youth challenge program, as defined in 10-1-101;~~
 - ~~(h) a state youth correctional facility, as defined in 41-5-103;~~
 - ~~(i) the Montana university system;~~
 - ~~(j) a community college; or~~
 - ~~(k) any other agency or subdivision of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.~~
- ~~(8)(9) "Full-time service" means service that is:~~
 - ~~(a) at least 180 days in a fiscal year;~~
 - ~~(b) at least 140 hours a month during at least 9 months in a fiscal year; or~~

(c) ~~full-time at least 1,080 hours in a fiscal year~~ under an alternative school calendar adopted by a school board ~~that is less than 180 days but meets minimum accreditation requirements of 1,080 hours and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.~~

~~(9)~~(10) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(11) "*Joint annuitant*" means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.

~~(10)~~(12) "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(11)~~(13) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

~~(12)~~(14) "Normal retirement age" means an age no earlier than 55 years of age, with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

~~(13)~~(15) "Part-time service" means service that is ~~less than 180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year~~ *not full-time service*. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(14)~~(16) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

~~(15)~~(17) ~~Retired~~ "*Retired*", "*retired member*", or "*retiree*" means a person who has terminated employment that ~~qualified~~ *qualifies* the person for membership ~~under 19-20-302~~ and who has received at least one monthly retirement benefit paid pursuant to this chapter.

~~(16)~~(18) "Retirement allowance" or "*retirement benefit*" means a monthly payment due to a ~~person retired member~~ who has qualified for service or disability retirement or due to a *joint annuitant* or beneficiary ~~as provided in 19-20-1001~~.

~~(17)~~(19) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(18)~~(20) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(19)~~(21) "Service" means the performance of ~~instructional duties or related activities~~ that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(20)~~(22) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

~~(21)~~(23) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment ~~and on which employee and employer contributions have been paid as required by 19-20-716~~.

(b) Termination pay does not include:

- (i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and
- (ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

~~(22)~~(24) “Vested” means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, ~~as required by 19-20-602, 19-20-605, and 19-20-607, and~~ who has a right to a future retirement benefit.

~~(23)~~(25) “Written application” or “written election” means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary.”

Section 2. Section 19-20-102, MCA, is amended to read:

“19-20-102. Retirement system — policy. (1) The state teachers’ retirement system created under the provisions of Chapter 87, Laws of 1937, is the state teachers’ retirement system of the state of Montana, and the provisions of this chapter do not affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment to this chapter. The state teachers’ retirement system is known as “The Teachers’ Retirement System of the State of Montana” and in that name shall transact all business of the retirement system, hold its assets in trust, and have the powers and privileges of a corporation that may be necessary to administer the provisions of this chapter.

(2) It is the policy of the state to:

- (a) provide equitable retirement benefits to members of the teachers’ retirement system based on each member’s normal service ~~retirement~~ and salary;
- (b) limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member’s last years of employment; and

(c) limit the compensation that a retired member may earn after retirement while working in a position that would normally be covered under the teachers’ retirement system to the amount determined under 19-20-731.

(3) *It is the policy of the state to ensure that public employees are reported to the correct public retirement system. The retirement system shall enter into memoranda of understanding with the public employees’ retirement board 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.”*

Section 3. Section 19-20-203, MCA, is amended to read:

“19-20-203. Officers and employees of retirement board. (1) It is the duty of the retirement board to:

- (a) elect a presiding officer from its membership;
- (b) ~~appoint a secretary, who may be one of its members;~~

(e)(b) employ *an executive director and other* technical or administrative employees who are necessary for the transaction of the business of the retirement system and establish their compensation pursuant to Title 2, chapter 18; and

(d)(c) designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

- (2) A quorum of the board is three members.”

Section 4. Section 19-20-208, MCA, is amended to read:

“19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer’s contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board’s duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) each month, report the name, social security number, *time worked*, and gross earnings of each retired member of the system who has been employed in a ~~part-time teaching, administrative, or faculty position under the reemployment provisions of~~ *position that is reportable to the retirement system pursuant to 19-20-731*;

(6) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(7) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(8) notify the retirement board of the employment of a person eligible for membership and forward the person’s membership application to the board;

(9) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member’s retirement.”

Section 5. Section 19-20-305, MCA, is amended to read:

“19-20-305. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant’s rights modified or recognized by a family law order.

- (2) For purposes of this section:

(a) “actuarially equivalent amount” means the portion of the participant’s benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee’s lifetime;

(b) “alternate payee” means the former spouse of the member or retiree who is entitled to an actuarially equivalent amount or a fixed amount of the member’s or retiree’s retirement benefit;

(c) “family law order” means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant’s payment rights in a retirement system to an alternate payee in compliance with this section; and

(d) “participant” means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, *date of birth*, and social security number. An alternate payee’s rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee’s rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment *that is not available to the affected participant under the retirement system or that would require administration in a manner different from the administrative processes used by the retirement system for administration of retirement benefits in general*; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable for the life of the alternate payee; or

(ii) a fixed amount, to be deducted from the participant’s benefit, of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.

(b) (i) ~~The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service for which the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant. When a family law order directs payment of an actuarially equivalent amount payable to the alternate payee, either the amount of the participant’s retirement benefit to be transferred to the alternate payee must be expressed as a percentage share of the retirement benefit payable to the participant or the percentage share must be readily determinable based on the factors provided in the family law order. The participant’s benefit must be reduced by the amount determined under this subsection (5)(b)(i).~~

(ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially adjusted to provide a benefit payable for the alternate payee’s lifetime.

(6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a percentage of the amount payable as determined by the formula in ~~subsection (5)(b)(i)~~ *lump-sum payment up to the total fixed amount or equal to*

the percentage share of the participant's benefit transferred to the alternate payee as directed in the family law order.

(7) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned *between the participant and the alternate payee receiving an actuarially equivalent amount* in the same manner as determined under subsection (5)(b)(i).

(8) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order *and approval of the family law order by the retirement system.*

(9) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(10) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(11) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section.

(12) (a) *In every circumstance, an actuarially equivalent amount payable to an alternate payee must terminate upon the death of the alternate payee. The amount may not be devised, bequeathed, or otherwise transferred by the alternate payee.*

(b) *A family law order may expressly provide that a fixed amount payable to an alternate payee may be transferred upon the death of the alternate payee to a beneficiary designated by the alternate payee. If a family law order does not expressly authorize an alternate payee to designate a beneficiary or if there is no beneficiary designation on file with the retirement system at the time of the alternate payee's death, the fixed amount payable to the alternate payee reverts to the participant or to the joint annuitant or beneficiary of the participant. A fixed amount payable to an alternate payee may not be devised, bequeathed, or otherwise transferred by the alternate payee in any other manner.*

(13) *The retirement system shall give effect to a family law order in a manner that conforms with all other applicable law pertaining to the administration of the retirement system. A family law order may not be construed to provide rights or benefits to any person beyond those rights or benefits expressly provided by law."*

Section 6. Section 19-20-405, MCA, is amended to read:

"19-20-405. Limit on creditable service that may be awarded. The total creditable service for service purchased under 19-20-402 through 19-20-404, 19-20-408, and 19-20-410(1), and 19-20-426 may not exceed 5 years."

Section 7. Section 19-20-701, MCA, is amended to read:

"19-20-701. Benefits. (1) The retirement, disability, and other benefits of the retirement system must be granted on the basis of the provisions of this chapter. A member's written application for benefits must include a statement certifying that there has been a bona fide separation from service, including

whether there are any intentions to be reemployed with the same employer that would be prohibited under the Internal Revenue Code.

(2) *If a member applies for a retirement benefit but dies before receiving the first monthly benefit allowance, benefits must be paid to the joint annuitant or beneficiary designated on the member's written application for a retirement allowance in the manner provided in 19-20-1001. If the member's written application did not include a designation of a joint annuitant or beneficiary, benefits must be paid to the beneficiary of record in the manner provided in 19-20-1001.*

Section 8. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances — certain period and life allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the allowances described in subsection (2) or (3) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. ~~If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.~~

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the ~~person~~ *joint annuitant* that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's ~~designated beneficiary~~ *joint annuitant*.

(b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's ~~designated beneficiary~~ *joint annuitant*.

(c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's ~~designated beneficiary~~ *joint annuitant*.

(d) *Upon election of an optional allowance and designation of a joint annuitant, any prior or subsequent designation of a beneficiary by the retired member is void.*

(3) (a) In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:

(i) 10 years if the member is 75 years of age or younger at the time of retirement; or

(ii) 20 years if the member is 65 years of age or younger at the time of retirement.

(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different ~~beneficiary~~ *beneficiary joint annuitant* if:

(i) the original ~~beneficiary~~ *beneficiary joint annuitant* has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the ~~designated beneficiary~~ *beneficiary joint annuitant*.

(ii) the member has been divorced from the original ~~beneficiary~~ *beneficiary joint annuitant* and the original ~~beneficiary~~ *beneficiary joint annuitant* has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original ~~beneficiary~~ *beneficiary joint annuitant* has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different ~~beneficiary~~ *beneficiary joint annuitant* or to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:

(a) the original ~~beneficiary~~ *beneficiary joint annuitant* has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the ~~designated beneficiary~~ *beneficiary original joint annuitant*.

(b) the member has been divorced from the original ~~beneficiary~~ *beneficiary joint annuitant* and the original ~~beneficiary~~ *beneficiary joint annuitant* has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original ~~beneficiary~~ *beneficiary joint annuitant* has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(7) The retired member shall file the written application required by subsection (4) or (5) with the board within 18 months of the death or divorce of the ~~designated beneficiary~~ *beneficiary joint annuitant*."

Section 9. Section 19-20-703, MCA, is amended to read:

"19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) Except as provided in subsection (5), the retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of an inactive member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(3)(a)(i).

(4) The life expectancy of a member or the member's ~~beneficiary~~ *joint annuitant* may not be recalculated after benefits commence.

(5) If a member terminates within 30 days of the last day of the school year, the member is considered to have terminated at the end of the member's contract, and the retirement allowance may not commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-instruction-related day as described in 20-1-304, whichever is later."

Section 10. Section 19-20-705, MCA, is amended to read:

"19-20-705. Correction of errors. (1) (a) If a change or error in the records results in a ~~member or beneficiary~~ *benefit recipient or alternate payee* receiving from the retirement system more or less than the ~~member or beneficiary~~ *benefit recipient or alternate payee* would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the ~~member or beneficiary~~ *benefit recipient or alternate payee* was correctly entitled will be paid.

(b) *The right of the retirement system to actuarially adjust benefits payable to a benefit recipient or alternate payee may not bar the application of any other remedy or penalty available to the retirement system under this chapter or at law. The retirement system may pursue any or all remedies or options for recovery of amounts owed to it that, in its sole discretion, are necessary for the proper administration of the retirement system.*

(c) *The retirement system may recover amounts owed to it by withholding:*

(i) *as a lump sum, the full amount owed to it from a withdrawal or payout of the member's accumulated contributions;*

(ii) *a percentage not to exceed 50% of each monthly benefit payable until the amount owed is paid in full; or*

(iii) *any or all of the \$500 death benefit.*

(d) *The retirement system's right to recover amounts owed to it has priority over the claim of any benefit recipient or alternate payee.*

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

(3) Upon discovery of a forged signature on a retirement benefit application, the benefit must be corrected as provided in subsection (1).

(4) Interest accrues on contributions not reported or amounts overpaid to members at the actuarially assumed rate. Interest accrues from the date the

contributions were due or the date the benefits were paid in error. If the board finds that the error was caused by the teachers' retirement system, interest must be waived."

Section 11. Section 19-20-715, MCA, is amended to read:

"19-20-715. ~~Compensation limit~~ Earned compensation — limitations. (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the *earned* compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's *earned* compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716."

Section 12. Section 19-20-717, MCA, is amended to read:

"19-20-717. Effect of no designation or no surviving beneficiary or joint annuitant. (1) If a beneficiary is not designated or if no designated beneficiary or *joint annuitant* survives the ~~payment recipient member or retired member~~, the estate of the ~~payment recipient member or retired member~~ is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the ~~payment recipient member or retired member~~. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the personal representative or executor of the survivor's estate.

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the system, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 13. Section 19-20-721, MCA, is amended to read:

"19-20-721. Designation of beneficiary. (1) ~~Each~~ *Except as otherwise provided in this chapter, each member or recipient of a benefit shall file with the board a written application nominating election designating a beneficiary who may be eligible to receive the benefit provided pursuant to this chapter. The board shall provide a form that may be used for this purpose. A member or benefit recipient may revoke the application and nominate written election and designate a different beneficiary by filing a new form for this purpose with the board.*

(2) A beneficiary who renounces an interest in the right to a payment of a benefit will be considered, for the purposes of further payment by the board of a renounced interest, to have predeceased the member or beneficiary."

Section 14. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits — reporting obligation of retired member.

(1) (a) Except as [provided in 19-20-732 or as] otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system *an employer* in a position eligible to participate ~~in~~ *that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:*

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) ~~For the purposes of this subsection (1), the~~ *The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:*

(i) ~~the amount of~~ *health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;*

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in [19-20-732 and] ~~19-20-733~~, the retirement benefit of a retired member:

(a) employed in a part-time position ~~or~~ *but* earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as

soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be ~~canceled~~ *suspended* if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position *or employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed* must be ~~canceled beginning in the month in~~ *suspended effective on the date on which the retired member returns to full-time employment.*

(4) For purposes of this section, ~~“position eligible to participate in the term “employed in a position that is reportable to the retirement system” includes any work performed or service provided by a retiree retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, or as a temporary service contractor, or as an independent contractor as those terms are defined in 39-8-102.~~

(5) *For the purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.*

(6) *Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.*

~~(5)~~(7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program. (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)”

Section 15. Section 19-20-733, MCA, is amended to read:

“19-20-733. Resumption of employment by retired member — suspension of benefits. (1) [Except as provided in 19-20-732,] if a retired member returns to ~~full-time~~ employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service

credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and ~~beneficiary joint annuitant~~ *beneficiary joint annuitant* previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement allowance *benefit option and with the same beneficiary joint annuitant* originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).

(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled. (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

Section 16. Section 19-20-805, MCA, is amended to read:

"19-20-805. Earned compensation—part-time service Calculation of average final compensation. (1) *Except as limited by this section, average final compensation is calculated by averaging the earned compensation paid to a member in 3 consecutive fiscal years of full-time service that yields the highest average.*

(1)(2) The earned compensation of a member who ~~retired~~ *retires* under 19-20-802, ~~or~~ 19-20-804, *or 19-20-902* and ~~had~~ *has* less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time

service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

(2)(3) (a) Subject to subsection ~~(2)(b)~~ (3)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers' retirement system, the member's average final compensation ~~may~~ *must* be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

(4) (a) *If the benefits excluded from earned compensation pursuant to 19-20-101(7)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted benefit amounts must be included in the calculation of average final compensation.*

(b) *If benefits have been converted to earned compensation as described in subsection (4)(a) but have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have benefits converted to earned compensation, any converted benefits reported as earned compensation in the 3 years used to calculate average final compensation may be included in the calculation of average final compensation only as termination pay under 19-20-716(1)(b)."*

Section 17. Section 19-20-1001, MCA, is amended to read:

"19-20-1001. Allowances for death of member prior to retirement. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804, without reference to

19-20-715(2), in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that *a beneficiary receiving payments under subsection (2)(a) dies and payments* made to the beneficiary do not equal the amount of the member's accumulated contributions ~~before at the time of~~ the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death ~~or if a family law order has been issued~~, then:

(a) each beneficiary ~~and alternate payee, if applicable~~, is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

(6) *If a family law order has been issued, an alternate payee's rights under the family law order must be given priority over the rights of a beneficiary.*"

Section 18. Section 19-20-1002, MCA, is amended to read:

"19-20-1002. Payments upon death of retiree. (1) In the event of the death of a *retired* member ~~after retirement~~, a death benefit of \$500 is payable to the *joint annuitant or* designated beneficiary.

(2) ~~In the event that~~ *If the deaths of a retired member and of the joint annuitant or all designated beneficiaries occur before the total retirement allowance payments made to a benefit recipient do not the retired member and to the joint annuitant or all designated beneficiaries* equal the amount of the member's accumulated contributions ~~before at the time of~~ the member's retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the *estate of the joint annuitant or to the estate of the longest-surviving* beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of death, the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age."

Section 19. Section 19-20-1003, MCA, is amended to read:

"19-20-1003. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a *retired* member's beneficiary or *joint annuitant* may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(3)(a)(i) or a lump sum must be paid if that is the only benefit due the beneficiary."

Section 20. Section 19-20-1101, MCA, is amended to read:

"19-20-1101. Withholding of group insurance premium from retirement allowance. (1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld may be paid directly to the insurance carrier or employer of record at the time of retirement.

(2) Upon the death of a retired member, the *joint annuitant* or beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the employer or the employer's insurance carrier.

(3) Each month, using the retirement system's online employer reporting system, the employer shall verify that all authorized insurance deductions are correct and notify the retired member of any changes."

Section 21. Repealer. The following section of the Montana Code Annotated is repealed:

19-20-720. Minimum monthly benefit allowance.

Section 22. Effective date. [This act] is effective July 1, 2011.

Approved March 25, 2011

CHAPTER NO. 60

[HB 92]

AN ACT REQUIRING THE PUBLIC SERVICE COMMISSION TO SET RATES FOR QUALIFYING SMALL POWER PRODUCTION FACILITIES USING AVOIDED COSTS OVER THE TERM OF THE CONTRACT; AMENDING SECTION 69-3-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 69-3-604, MCA, is amended to read:

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

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

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

(4) The commission ~~may~~ *shall* set these rates ~~by use of any of the following methods:~~

~~(a) using the avoided cost over the term of the contract;~~

~~(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or~~

~~(c) any other method that will promote the development of qualifying small power production facilities.~~

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

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

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

Section 4. Applicability. [This act] applies to contracts presented to the public service commission on or after [the effective date of this act].

Approved March 25, 2011

CHAPTER NO. 61

[HB 93]

AN ACT REQUIRING THAT REVENUE FROM FORFEITED FIRE HAZARD REDUCTION PERFORMANCE BONDS BE DEPOSITED INTO A STATE SPECIAL REVENUE FUND FOR AUTHORIZATION, MANAGEMENT, AND COMPLETION OF FIRE HAZARD REDUCTION ACTIVITIES; ESTABLISHING A FIRE HAZARD REDUCTION FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 76-13-410, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314;

10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; [section 3]; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 2. Section 76-13-410, MCA, is amended to read:

"76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with the requirements of 76-13-407 and 76-13-408, the person may be enjoined from further cutting, clearing, and construction operations until the department has found the person to be in compliance with 76-13-407 and 76-13-408. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings must be conducted in the district court of the county where the land is located.

(2) If a person claims to have a minimum slash hazard but the department's inspection determines otherwise, the hazard reduction requirements of this part apply.

(3) If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the fire hazard reduction or management at the expense of the contractor or of the owner of the timber or other forest products cut or produced from the land upon which the unabated fire hazard remains.

(4) (a) The cost and expense of the fire hazard reduction or management work, plus 20% of the cost and expense of the work as a penalty, constitute a lien

upon the forest products cut or produced from the land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to the department within 15 days of its written demand, the performance bond required by 76-13-408 and 76-13-409, upon notice to the contractor, must be automatically forfeited to the extent needed to cover the cost and expenses of reducing or managing the fire hazard, plus a penalty of 20% of the cost and expenses. If the bond is insufficient to cover the cost, expenses, and penalty, the department may bring legal action on behalf of the state to recover the cost, expenses, and penalty.

(b) Revenue from forfeited performance bonds required by 76-13-408 and 76-13-409 must be deposited into the fire hazard reduction fund established in [section 3].

(5) In addition to other remedies provided in this part, the department may, after notice, require a person to show cause why the department should not withhold the issuance of any further fire hazard reduction agreement or exemption certificate to a person that:

(a) harvests timber without a valid fire hazard reduction agreement; or

(b) has forfeited the performance bond on a fire hazard reduction agreement within the 2 preceding years and fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with 76-13-407 or 76-13-408 within 30 days after being notified by the department.

(6) If the person fails to show sufficient cause as required by subsection (5), the department may withhold the issuance of any further fire hazard reduction agreement or exemption certificate for a period not to exceed 3 years.”

Section 3. Fire hazard reduction fund. (1) There is a fire hazard reduction fund in the state special revenue fund established in 17-2-102.

(2) There is deposited in the fund all revenue from forfeited performance bonds provided for in 76-13-410.

(3) The fund is statutorily appropriated, as provided in 17-7-502, to the department of natural resources and conservation for the purposes of authorizing, managing, and completing fire hazard reduction activities pursuant to this part.

Section 4. Codification instruction. [Section 3] 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 3].

Section 5. Effective date. [This act] is effective July 1, 2011.

Section 6. Termination. [This act] terminates June 30, 2019.

Approved March 25, 2011

CHAPTER NO. 62

[HB 98]

AN ACT DIRECTING THAT MONEY RECEIVED FROM THE SALE OR LEASE OF STATE PARKS PROPERTIES BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND INSTEAD OF THE PERMANENT FUND; DIRECTING THE USE OF THE MONEY FOR STATE PARKS PURPOSES; AMENDING SECTIONS 10-3-801, 77-1-804, AND 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

“10-3-801. Account created for funding search and rescue operations — rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122(2)(f);

(b) fund transfers pursuant to 87-1-601~~(9)~~(10). These funds may be used only as provided in 87-1-601~~(9)~~(10).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of \$6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

(ii) a county sheriff's office at a maximum of \$6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of \$6,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing local search and rescue units or a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year;

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance

in verifying and processing claims for reimbursement, equipment, and training; and

(d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."

Section 2. 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 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) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. 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. Motorized vehicle use by recreationists on state lands is restricted to

federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(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) 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. Civil penalties collected under this subsection must be deposited as provided in 87-1-601~~(7)~~(8).”

Section 3. Section 87-1-601, MCA, is amended to read:

“87-1-601. (Temporary) Use of fish and game money. (1) (a) Except as provided in subsections ~~(7)~~ (8) and ~~(9)~~ (10), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections ~~(7)~~ (8) and ~~(8)~~ (9), all money collected or received from fines and forfeited bonds, except money collected or received by a justice’s court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621, ~~and~~ section 2(3), Chapter 560, Laws of 2005, *and subsection (6) of this section*, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the sale or lease of lands acquired and managed for the purposes of Title 23, chapter 1, must be deposited in the state special revenue fund in the account established for miscellaneous funds received for state parks and may be used only for the purposes of Title 23, chapter 1.

~~(6)~~(7) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

~~(7)~~(8) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

~~(8)~~(9) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

~~(9)~~(10) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs.

87-1-601. (Effective March 1, 2011) Use of fish and game money. (1) (a) Except as provided in 87-1-290 and subsections ~~(7)~~ (8) and ~~(9)~~ (10) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to

the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections ~~(7)~~ (8) and ~~(8)~~ (9), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621, and section 2(3), Chapter 560, Laws of 2005, and subsection (6) of this section, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the sale or lease of lands acquired and managed for the purposes of Title 23, chapter 1, must be deposited in the state special revenue fund in the account established for miscellaneous funds received for state parks and may be used only for the purposes of Title 23, chapter 1.

~~(6)~~(7) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has

submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

~~(7)~~(8) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

~~(8)~~(9) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

~~(9)~~(10) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

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

Approved March 25, 2011

CHAPTER NO. 63

[HB 118]

AN ACT REVISING THE COMPOSITION OF THE BOARD OF DIRECTORS OF THE STATE COMPENSATION INSURANCE FUND; AMENDING SECTION 2-15-1019, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of state compensation insurance fund — legislative liaisons. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) (a) At least four of the seven members shall represent state fund policyholders and may be employees of state fund policyholders. At least four

members of the board shall represent private, ~~for-profit~~ enterprises. One of the seven members may be a licensed insurance producer. *One of the seven members must be a person with executive management experience in an insurance company or executive level experience in insurance financial accounting.*

(b) A member of the board may not:

~~(a)~~(i) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

~~(b)~~(ii) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply.

(8) There must be two legislative liaisons to the board consisting of members of the economic affairs interim committee provided for in 5-5-223. Subject to 5-5-234, the presiding officer of the economic affairs interim committee shall appoint the liaisons from the majority party and the minority party at the first interim committee meeting.

(9) Legislative liaisons shall serve from appointment through each even-numbered calendar year.

(10) A legislative liaison may:

(a) attend board meetings; and

(b) receive board meeting agendas and information relating to agenda items from the staff of the state fund.

(11) Legislative liaisons appointed pursuant to subsection (8) are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the economic affairs interim committee."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to appointments made by the governor to the state compensation insurance fund on or after [the effective date of this act].

Approved March 25, 2011

CHAPTER NO. 64

[HB 119]

AN ACT GENERALLY REVISING THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CLARIFYING CERTAIN DEFINITIONS; CLARIFYING ELIGIBILITY REQUIREMENTS FOR FIRE COMPANIES AND FIREFIGHTERS; CLARIFYING AND ADDING REQUIREMENTS FOR DOCUMENTATION; REQUIRING THAT CERTAIN DISPUTES BE RESOLVED BEFORE PAYMENT OF A BENEFIT; CLARIFYING DEATH AND DISABILITY BENEFIT PROVISIONS; CLARIFYING FILING REQUIREMENTS FOR FIRE COMPANIES; EXTENDING EXISTING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-33-2110, 7-33-2311, 7-33-2316, 19-2-408, 19-17-102, 19-17-106, 19-17-108, 19-17-201, 19-17-203, 19-17-204, 19-17-401, 19-17-403, 19-17-404, 19-17-411, 19-17-501, 19-17-502, 19-17-503, AND 19-17-506, MCA; REPEALING SECTIONS 19-17-104,

19-17-402, 19-17-504, AND 19-17-505, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 7-33-2110, MCA, is amended to read:

“7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) ~~No~~ A right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan; or payments provided under ~~19-17-103 Title 19, chapter 17,~~ may *not* be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.”

Section 2. Section 7-33-2311, MCA, is amended to read:

“7-33-2311. Fire companies authorized. (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the presiding officer and secretary, providing the date of organization, name, officers, and roll of active and honorary members ~~or a copy of the certificate provided for in 19-17-402. The certificate and filing must be renewed annually on or before September 1.~~

(2) *A Pursuant to [section 11], a fire company is not allowed more than 28 certificate members shall file with the public employees’ retirement board by September 1 of each year:*

- (a) *the annual certificate for the prior fiscal year;*
- (b) *the roster of active and inactive members for the current fiscal year; and*
- (c) *membership cards for all members.”*

Section 3. Section 7-33-2316, MCA, is amended to read:

“7-33-2316. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) ~~No~~ A right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan; or payments provided under ~~19-17-103 Title 19, chapter 17,~~ may *not* be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.”

Section 4. Section 19-2-408, MCA, is amended to read:

“19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees’ retirement system’s defined benefit plan, except as

otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the ~~volunteer firefighters' pension plan~~ *Volunteer Firefighters' Compensation Act*, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

- (a) expenditures to purchase intangible assets for plan administration;
- (b) expenses of the defined contribution plan;
- (c) expenditures of funds allocated under 19-3-112(1)(b) to the education fund established in 19-3-112(1)(a); or
- (d) expenses for an actuarial valuation under 19-2-405(2) performed during the first year of a biennium.

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan."

Section 5. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter *as provided in 19-17-108* during the most recently reportable fiscal year.

(2) "*Allowance*" means a total monetary and gift amount that is available to a volunteer firefighter from a fire company pursuant to [section 9].

~~(2)~~(3) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

~~(3)~~(4) "Board" means the public employees' retirement board provided for in 2-15-1009.

~~(4)~~(5) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

~~(5) "Department" means the department of administration.~~

(6) "*Compensation*" means remuneration for services rendered as a firefighter from the fire company requesting credit for that firefighter.

~~(6)~~(7) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

~~(7)~~(8) "Designated official" means a representative of a fire company appointed by the fire chief to perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire company presiding officer as described in 7-33-2312.

~~(8)~~(9) "Disability" or "permanent total disability" means a *duty-related injury resulting in permanent total disability* as defined in 39-71-116.

~~(9)~~(10) "Fire company" means ~~a fire company organized under 7-33-2311~~ in an organization of volunteer firefighters created under the authority of a

governing board or commission to serve an unincorporated area, town, or village and includes a volunteer fire department, a fire district, and a fire service area created under the provisions of Title 7, chapter 33.

(10)(11) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(12) "Inactive member" means a member not credited with service under this chapter as provided in 19-17-108 during the most recently reportable fiscal year.

(11)(13) "Member" means a volunteer firefighter who has service credited under this chapter.

(14) "Pension benefit" means a full or partial payment for service earned as a volunteer firefighter and does not include payment for disability.

(12)(15) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(16) "Reimbursed" means the return by a fire company of an equivalent amount of money expended by a member for the benefit of the fire company.

(13)(17) "Retiree" or "retired member" means a member who is receiving full or partial participation pension benefits or disability benefits from the pension trust fund.

(14) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

(15)(18) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to. Supplemental insurance does not include any insurance required by law, including such as workers' compensation insurance.

(16)(19) "Surviving spouse" means the spouse married to a member when the member dies.

(17)(20) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(18)(21) "Training" means instruction pertaining to firefighting that is supervised by the chief or a designated official.

(19)(22) "Volunteer firefighter" means a person who is an active a member of an eligible fire company and is not compensated for services as a firefighter."

Section 6. Section 19-17-106, MCA, is amended to read:

"19-17-106. Pension trust fund established — restrictions on use. (1)

A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan.

(2) The pension trust fund must be funded on an actuarially sound basis. For purposes of this subsection, "actuarially sound basis" means that contributions must be sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

(3) Except as provided in this section, a member or an employee of the department board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

(4) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, *and* their dependent children, ~~and for supplemental payments for~~ qualified fire companies, and for paying the reasonable administrative expenses of administering this chapter.

(5) Upon the termination of the pension trust fund, the substantial reduction in the number of members that would constitute a partial termination of the pension trust fund, or the complete discontinuance of contributions to the pension trust fund, the pension benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent that the benefit is funded.”

Section 7. Eligible fire company. To be eligible to participate under this chapter, a fire company shall provide to the board documentation of the following:

- (1) the fire company’s name and mailing address;
- (2) the name of the fire chief and designated official, if any;
- (3) the portion of the fire district serviced by the fire company;
- (4) that the area serviced is located in an unincorporated area;

(5) that the fire company maintains firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings for the storage of the equipment. The equipment and buildings must be valued at \$12,000 or more.

(6) that the fire company was properly established by a governing board. Documentation under this subsection (6) must consist of:

(a) a copy of the minutes of the meeting during which the governing board established the fire company; or

(b) if the meeting minutes are unavailable, a copy of its first filing with the county clerk pursuant to 7-33-2311.

Section 8. Section 19-17-108, MCA, is amended to read:

“19-17-108. Credit for service as volunteer firefighter — records. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve *throughout the entire fiscal year* with a *single* fire company ~~throughout the entire fiscal year that is organized under Title 7, chapter 33, and continues to meet the requirements of [section 7].~~

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies must be credited toward a member’s eligibility for ~~full or partial~~ benefits.

(3) A volunteer firefighter ~~must~~ *may not* receive credit for service during any fiscal year ~~if~~ *unless*:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of training in ~~matters pertaining to~~ firefighting *duties as outlined in 19-17-105* under a formal program that has been formulated, supervised, and certified to the board by the chief or designated official of the fire company; *and*

(b) the volunteer firefighter's participation in the training program is documented in the fire company's records ~~filed and maintained pursuant to [section 10]~~ by the chief or designated official; ~~and~~

~~(c) the fire company maintained firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more.~~

~~(4) The chief or designated official of each fire company shall keep and maintain training records for each current and former volunteer firefighter who is or was a member of the fire company."~~

Section 9. Allowable payments to volunteer firefighters. (1) Allowable payments to volunteer firefighters include:

- (a) payments of money reimbursed for documented expenses; and
- (b) an allowance, including a stipend or per diem, that may not exceed \$300 in a calendar year.
- (2) Compensation, as defined in 19-17-102, is not an allowable payment.
- (3) Records of all payments and allowances must be maintained pursuant to [section 10].

Section 10. Records information management. (1) The chief or designated official of a fire company shall maintain the records provided for in 19-17-108 and [section 9] for each active or inactive member of the fire company.

(2) Records must be maintained according to the state of Montana general records retention schedules, as published by the secretary of state pursuant to Title 2, chapter 6.

Section 11. Filing required reports — limitations. (1) The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file with the board an annual certificate, the current year's roster, and a membership card for each new member.

(2) (a) The annual certificate is a form reporting a fire company's membership eligibility for the previous fiscal year.

(b) The annual certificate must be completed on a form prescribed by the board and contain the date of organization of the fire company and the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and who successfully completed 30 hours of training during the preceding fiscal year, as required by 19-17-108.

(c) The chief or designated official shall subscribe and verify under oath, before a notary, that the fire company and members qualified under 19-17-108 and [section 7].

(d) The board shall maintain the certificate for the purpose of establishing service for members and eligibility for benefits.

(3) The roster must be signed by the fire chief or designated official, filed with the board, and contain information in writing that provides the names of the fire company, its date of organization, officers, and roll of active and inactive members for the current fiscal year. A roster may be updated to report new members but may not be retroactive.

(4) A membership card must be completed and filed with the board for each member who was a member on or before July 1, 2011, and for each new member who joins after July 1, 2011.

(5) The current fire chief shall file any late or amended annual certificates and the associated certified training records within 3 years of the original

annual certificate due date. An annual certificate may be amended only once. The board shall consider and may approve late filings. Information provided to the board by the fire chief must be in accordance with the board's rules.

(6) The current fire chief may request to appear before the board for consideration of the request to file a late or amended annual certificate.

Section 12. Corrections, audits, and penalties. (1) If fraud or error results in a member, surviving spouse, or dependent child receiving more or less of a benefit than that to which the member, surviving spouse, or dependent child is entitled, then on the discovery of the error the board shall correct the credit for service and, if necessary, equitably adjust the payments.

(2) The board may require a fire company to furnish additional information concerning members in connection with an audit or a claim for benefits or service.

(3) Upon discovery of falsified information, the fire company shall submit any and all requested documentation to the board.

(4) A person required to make a statement or affidavit by this chapter who willfully falsifies the statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding \$1,000 or be imprisoned for a term not exceeding 1 year, or both.

Section 13. Section 19-17-201, MCA, is amended to read:

"19-17-201. Administration of chapter. (1) The board is the trustee of all money collected under this chapter and has exclusive control of the administration of the pension trust fund except as otherwise provided by law.

(2) The ~~department~~ board shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is the custodian of the pension trust fund, subject to the control of the board for the administration of the fund and the board of investments for the investment of the fund.

(4) The board shall review the ~~sufficiency of~~ benefits provided under this chapter and recommend to the legislature those changes in benefits that may be ~~necessary available for retired members and their beneficiaries to maintain a stable standard of living.~~

(5) (a) *Disputes regarding credited years of service must be resolved, either by staff of the board and the member or by the board prior to the commencement of the retirement or disability benefit.*

(b) *Payment of the benefit will be retroactive to the month following the month the retirement application was received by the board."*

Section 14. Section 19-17-203, MCA, is amended to read:

"19-17-203. Rules to be made by board. The board shall make ~~such~~ rules as *that* it considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act ~~and the volunteer firefighters' pension plan~~, and that are not inconsistent with the provisions ~~thereof of the Volunteer Firefighters' Compensation Act.~~

Section 15. Section 19-17-204, MCA, is amended to read:

"19-17-204. Administrative expenses. Necessary expenses for the administration of the Volunteer Firefighters' Compensation Act ~~and the volunteer firefighters' pension plan~~ are a charge against the pension trust fund. The necessary administrative expenses attributable to this chapter must be paid from the investment earnings on the public employees' pension trust fund.

Before fiscal yearend closing, the board shall compute the expenses directly or proportionally attributable to this chapter over the past fiscal year and transfer that amount from the ~~volunteer firefighters' pension trust~~ *Volunteer Firefighters' Compensation Act* fund to the public employees' pension trust fund."

Section 16. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension and disability benefits. (1) To qualify for a full pension, or partial pension, or disability benefit under this chapter, a member shall *must* meet the requirements of subsections (2) ~~or~~ and (3) ~~and~~ (4).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is ~~prevented from completing~~ *does not complete* at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) ~~An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.~~

~~(4)~~(3) Except as provided in ~~subsection (5)~~ [section 20]:

(a) to receive a pension ~~or~~ disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension ~~or~~ disability benefit under this chapter may not become an active member of any fire company.

~~(5) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire company without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to service."~~

Section 17. Section 19-17-403, MCA, is amended to read:

"19-17-403. Application for benefits. (1) A member may, as provided in this section, apply for retirement benefits before terminating service, but commencement of the benefits must be as provided in 19-17-411.

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

(3) The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member;

(c) the date of the member's death, if applicable; and

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

(4) The board may require any proof of age, death, and service that it may consider proper, but it must accept a certificate properly completed and timely filed under [section 11] 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of service."

Section 18. Section 19-17-404, MCA, is amended to read:

“19-17-404. Amount of pension and disability benefits. (1) ~~Each eligible~~ A member ~~must is eligible to~~ receive a pension ~~or disability~~ benefit as provided in this section.

(2) (a) Except as provided in subsection (2)(c), the full pension benefit paid to ~~an eligible members~~ member is \$150 a month.

(b) A partial pension benefit *paid to an eligible member* is calculated by multiplying the full pension benefit in subsection (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) The full pension benefit of a member who continued to be an active member after completing 20 years of service must be increased by \$7.50 a month for each additional year of active service the member completed after 20 years of service, up to 30 total years of service.

~~(3) The disability benefit paid to an eligible member is calculated in the same manner as partial pension benefits described in subsection (2)(b), except that the numerator may not be less than 10.~~

~~(4) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner.”~~

Section 19. Section 19-17-411, MCA, is amended to read:

“19-17-411. Time benefits commence. (1) The pension benefit payable pursuant to this part may commence on:

(a) the first day of the month following the eligible member's last day of service; or

(b) ~~on~~ the first day of a later month following filing of the written application.

(2) *The benefit may not commence prior to the date of the board's decision regarding any disputed credited years of service pursuant to 19-17-201.*

~~(2) The disability retirement benefit payable pursuant to this part must commence on the day following the member's termination from service.~~

(3) Monthly survivorship benefits payable pursuant to this part must commence ~~on~~ the *first day of the month* following the *day of death* of the member.”

Section 20. Return to service. (1) A retired member may return to service with a fire company without loss of benefits.

(2) A retired member returning to service under this section is not considered an active member earning credit for service.

(3) The fire chief shall prescribe the duties of any retired member returning to service.

Section 21. Section 19-17-501, MCA, is amended to read:

“19-17-501. Eligibility for medical and funeral expenses. (1) To qualify for medical expenses under ~~19-17-504~~ *19-17-502*, a volunteer firefighter must be ~~an active~~ a member of a *an eligible* fire company that is not covered by workers' compensation insurance *and must be listed on the fire company roster in the year when the injury or illness occurs. The injury or illness must have occurred in the line of duty, as described in 19-17-105.*

(2) To qualify for funeral expenses under ~~19-17-505~~ *19-17-503*, a volunteer firefighter must, at the time of death, be ~~an active~~ a member of a *an eligible* fire company *and must be listed on the fire company roster in the year the death*

occurs. *The death must have occurred in the line of duty, as described in 19-17-105.*"

Section 22. Section 19-17-502, MCA, is amended to read:

"19-17-502. Procedure for claiming medical Medical expenses. (1) A member who claims medical expenses under ~~19-17-504~~ *this section* shall submit a *report of injury and medical claim* on a form provided by the board *in accordance with the board's rules*. The claim must be verified by the member and by competent medical authority. The claim must be submitted within ~~1 year~~ *12 months* from the date of incurring the injury or illness.

(2) The claim must contain:

(a) the name, *social security number*, and address of the member;

(b) the date, place, and manner of incurring the injury or illness;

(c) the name and address of the attending physician, surgeon, or nurse, if any;

(d) the dates of hospitalization, if hospitalized;

(e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;

(f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses; *and*

(g) an affidavit from the chief or designated official of the fire company stating that ~~the fire company was organized under the laws of Montana in an unincorporated town or village, that the member was, at the time of the injury or illness, an active a member of the fire company;~~ and that the injury or illness was incurred in the line of duty as described in 19-17-105.

(3) *The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty as described in 19-17-105 and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must equal the member's necessary and reasonable out-of-pocket medical expenses that resulted directly from the injury or illness and that were billed within 36 months following the date of the injury or illness.*

(4) *A total claim filed pursuant to subsection (1) may not exceed \$25,000.*

(5) *If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of \$1,500 to help defray the cost of a prosthesis, whichever is less.*

(6) *The prosthesis may be replaced when necessary, but not more often than every 60 months. The board shall authorize payment of not more than \$1,500 of the replacement costs."*

Section 23. Section 19-17-503, MCA, is amended to read:

"19-17-503. Procedure for claiming funeral Funeral expenses. (1) A person claiming the funeral expenses ~~provided for in 19-17-505~~ *under this section* shall submit ~~the claim on a form provided by the board, in accordance with the board's rules~~ *a claim form, the death certificate, and a copy of the bill from the funeral director. The claim must be submitted on a form provided by the board, in accordance with the board's rules, and must be verified by the claimant. The claim must be filed with the board within 12 months from the member's date of death.*

(2) *The claim must contain:*

(a) *the name, social security number, and address of the member; and*

(b) *an affidavit from the chief or designated official of the fire company stating that the member was, at the time of death, a member of the fire company and that the death occurred in the line of duty as described in 19-17-105.*

(3) *The board shall authorize payment of reasonable expenses or \$1,500, whichever is less, to help defray the funeral expense of the member whose death occurred in the line of duty, as described in 19-17-105.”*

Section 24. Section 19-17-506, MCA, is amended to read:

“19-17-506. Payment of medical and funeral expenses. When a claim under ~~19-17-504 or 19-17-505~~ 19-17-502 or 19-17-503 is received and approved by the board, payment must be made directly to the appropriate provider of the medical care or funeral services or, if documentation is provided of the full payment of medical care or funeral expenses, to the claimant.”

Section 25. Eligibility for disability benefits. (1) To qualify for a disability benefit under this chapter, a member must meet the requirements of subsections (2) and (3).

(2) A member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(3) A member who receives a disability benefit may not return to service, either active or inactive, with any fire company.

Section 26. Amount of disability benefit. (1) A member is eligible to receive a disability benefit as provided in [section 25].

(2) The disability benefit paid to an eligible member is calculated by multiplying the full pension benefit as provided in 19-17-404 by a fraction, the numerator of which is the eligible member’s years of service and the denominator of which is 20, except the numerator may not be less than 10.

Section 27. Time disability benefits commence. The disability retirement benefit payable pursuant to this part must commence on the first day of the month following the member’s termination from service but may not commence prior to the date of the board’s decision regarding any disputed credited years of service pursuant to 19-17-201.

Section 28. Repealer. The following sections of the Montana Code Annotated are repealed:

19-17-104. Penalty for false statements or claims.

19-17-402. Certificate of eligibility.

19-17-504. Medical expenses.

19-17-505. Funeral expenses.

Section 29. Directions to code commissioner. (1) Section 19-17-103 is intended to be renumbered and codified as an integral part of Title 19, chapter 17, part 2.

(2) Sections 19-17-408, 19-17-409, and 19-17-410 are intended to be renumbered and codified as an integral part of Title 19, chapter 17, part 6.

Section 30. Codification instructions. (1) [Sections 7 and 9 through 12] are intended to be codified as an integral part of Title 19, chapter 17, part 1, and the provisions of Title 19, chapter 17, part 1, apply to [sections 7 and 9 through 12].

(2) [Section 20] is intended to be codified as an integral part of Title 19, chapter 17, part 4, and the provisions of Title 19, chapter 17, part 4, apply to [section 20].

(3) [Sections 25 through 27] are intended to be codified as an integral part of Title 19, chapter 17, and the provisions of Title 19, chapter 17, apply to [sections 25 through 27].

Section 31. Effective date. [This act] is effective July 1, 2011.

Approved March 25, 2011

CHAPTER NO. 65

[HB 120]

AN ACT REVISING THE LAW CONCERNING MINUTES FOR PUBLIC MEETINGS; CLARIFYING THAT AN OFFICIAL AUDIO RECORDING OF A PUBLIC MEETING CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC MEETING IF DESIGNATED AS OFFICIAL; REQUIRING A WRITTEN RECORD CONTAINING CERTAIN INFORMATION FOR A PUBLIC MEETING IF AUDIO MINUTES ARE DESIGNATED AS OFFICIAL MINUTES; AND AMENDING SECTION 2-3-212, MCA.

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

Section 1. Section 2-3-212, MCA, is amended to read:

“2-3-212. Minutes of meetings — public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open ~~shall~~ *must* be kept and ~~shall~~ *must* be available for inspection by the public. *If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).*

(2) ~~Such minutes shall~~ *Minutes must* include without limitation:

- (a) *the* date, time, and place of *the* meeting;
- (b) a list of the individual members of the public body, agency, or organization *who were* in attendance;
- (c) the substance of all matters proposed, discussed, or decided; ~~and~~ *and*
- (d) at the request of any member, a record of *votes* by individual members of *for* any votes taken.

(3) *If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.”*

Approved March 25, 2011

CHAPTER NO. 66

[HB 127]

AN ACT GENERALLY REVISING GAMBLING LAWS; REVISING BINGO LAWS; REVISING VIDEO GAMBLING MACHINE LAWS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 23-5-112, 23-5-412, AND 23-5-608, MCA.

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

Section 1. Section 23-5-112, MCA, is amended to read:

“23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) “Applicant” means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) “Application” means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) “Associated gambling business” means a person who provides a service or product to a licensed gambling business and who:

(a) has a reason to possess or maintain control over gambling devices;

(b) has access to proprietary information or gambling tax information; or

(c) is a party in processing gambling transactions.

(4) “Authorized equipment” means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(5) “Bingo” means a gambling activity played for prizes with a card bearing a printed design of 5 columns. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One or more numbers may appear in each square, except for the center square, which may be considered a free play. Numbers must be randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(6) “Bingo caller” means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(7) *“Bingo session” means all activities incidental to a series of bingo games conducted by a licensed operator beginning when the first bingo ball is drawn in the first game of bingo.*

~~(7)~~(8) “Card game table” or “table” means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

~~(8)~~(9) “Card game tournament” means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

~~(9)~~(10) “Dealer” means a person with a dealer’s license issued under part 3 of this chapter.

~~(10)~~(11) “Department” means the department of justice.

~~(11)~~(12) “Distributor” means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, ~~or~~ route operator, *or operator* equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed *manufacturer*, distributor, route operator, or operator.

~~(12)~~(13) (a) “Gambling” or “gambling activity” means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(c) The term does not include social card games played solely for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.

~~(13)~~(14) “Gambling device” means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

~~(14)~~(15) “Gambling enterprise” means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

~~(15)~~(16) (a) “Gift enterprise” means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

~~(16)~~(17) “Gross proceeds” means gross revenue received less prizes paid out.

~~(17)~~(18) “House player” means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.

~~(18)~~(19) “Illegal gambling device” means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, ~~or~~ under part 5 of this chapter, *in a bingo game approved by the department under part 4 of this chapter*, or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.

~~(19)~~(20) “Illegal gambling enterprise” means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or

sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

- (d) credit gambling; and
- (e) internet gambling.

~~(20)~~(21) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility or advance deposit wagering with a licensed advance deposit wagering hub operator allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

~~(21)~~(22) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(22)~~(23) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(23)~~(24) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

~~(24)~~(25) "Licensee" means a person who has received a license from the department.

~~(25)~~(26) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(26)~~(27) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

- (b) The term does not mean lotteries authorized under Title 23, chapter 7.

~~(27)~~(28) "Manufacturer" means a person who:

- (a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; ~~or~~

- (b) possesses gambling devices or components of gambling devices for the purpose of testing them; *or*

- (c) *purchases gambling devices or components from licensed manufacturers, distributors, route operators, or operators as trade-ins or to refurbish, rebuild, or*

repair to sell to licensed manufacturers, distributors, route operators, or operators.

~~(28)~~(29) “Nonprofit organization” means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans’, fraternal, beneficial, civic, senior citizens’, or service organization established to support charitable activities, scholarships or educational grants, or community service projects.

~~(29)~~(30) “Operator” means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

~~(30)~~(31) “Permit” means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

~~(31)~~(32) “Person” or “persons” means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(32)~~(33) “Premises” means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator’s license application and approved by the department.

~~(33)~~(34) “Promotional game of chance” means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

~~(34)~~(35) “Public gambling” means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(35)~~(36) “Raffle” means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(36)~~(37) “Route operator” means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises *and may sell gambling equipment to a distributor or manufacturer.*

~~(37)~~(38) “Senior citizen center” means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide

living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

~~(38)~~(39) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(39)~~(40) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. Section 23-5-412, MCA, is amended to read:

"23-5-412. Card prices and prizes — exception. (1) Except as provided in subsection ~~(3)~~ (2):

(a) the price for an individual ~~bingo or~~ keno card may not exceed 50 cents; *and*

(b) a prize may not exceed the value of \$100 for each individual ~~bingo game or keno card;~~ *and*

~~(c) it is unlawful to, in any manner, combine any bingo or keno games so as to increase the ultimate value of the prize.~~

~~(2) Bingo and keno prizes may be paid in either tangible personal property or cash.~~

~~(3)~~(a)(2) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

(i)(a) no more than 50 cents is wagered on each combination of numbers; and

(ii)(b) a winning combination does not pay more than \$100.

~~(b) A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:~~

(i) no more than 50 cents is wagered on each bingo pattern; and

(ii) a winning pattern does not pay more than \$100.

~~(4) Any bingo card other than a standard card with 5 columns and 25 squares with 1 number appearing in each square or any card that allows the player to print numbers on the card must be approved by the department prior to being offered for play.~~

~~(5)~~(3) A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.

(4) A bingo session must last at least 2 consecutive hours or 20 or more consecutive bingo games. A bingo session may not begin less than 2 hours after the conclusion of a prior session conducted on the same premises.

(5) Except as provided in subsections (6), (7), and (9):

(a) the price for an individual bingo card may not exceed \$1;

(b) a prize may not exceed the value of \$800 for each individual bingo game, and total bingo prize payouts may not exceed \$3,000 during a bingo session.

(6) A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:

(a) no more than 50 cents is wagered on each bingo pattern; and

(b) a winning pattern does not pay more than \$100.

(7) Subject to the department's approval, an operator licensed to conduct live bingo games may conduct up to five special bingo sessions a year, in which a bingo prize may not exceed the value of \$800 and the total bingo prize payouts may not exceed \$5,000 during the special bingo session. At least 30 days must elapse between the conclusion of one special bingo session and the beginning of the next special bingo session. Before the start of a special bingo session, the operator shall submit to the department an application for a special bingo session event permit. The application must be accompanied by a \$10 fee, which the department shall retain for administrative purposes. An exempt charitable organization under 23-5-406 that offers live bingo activities is not eligible for a special bingo session event permit.

(8) Any bingo card other than a standard card with 5 columns and 25 squares with 1 number appearing in each square or any card that allows the player to print numbers on the card must be approved by the department prior to being offered for play.

(9) An exempt charitable organization under 23-5-406 that conducts live bingo activities at a place other than its main premises or place of operations:

(a) is not limited to a maximum per-session prize payout limit;

(b) may not charge more than 50 cents for an individual bingo card; and

(c) may not award a bingo prize that exceeds \$100 in value.

~~(6)~~(10) If a licensed operator conducts a promotional game of chance involving bingo or keno, the value of the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance may not exceed \$100.

(11) It is unlawful to combine, in any manner, any bingo or keno games so as to increase the ultimate value of the prize. Bingo and keno prizes may be paid in either tangible personal property or cash or in any combination of tangible personal property and cash."

Section 3. Section 23-5-608, MCA, is amended to read:

"23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash — ticket voucher expiration — rules. (1) A video gambling machine may not allow more than \$2 to be played on a game or award free games or credits in excess of the following amounts:

(a) \$800 a game for a video draw poker machine; and

(b) \$800 a game for a video keno or bingo machine.

(2) A licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher.

(3) *The department may establish by rule a reasonable time period during which a player shall present a valid ticket voucher to the licensee for payment before the voucher may be considered expired and invalid.*

Approved March 25, 2011

CHAPTER NO. 67

[HB 169]

AN ACT REPEALING THE ELECTRICITY BUYING COOPERATIVE ACT; AMENDING SECTION 35-19-311, MCA; REPEALING SECTIONS 35-19-101, 35-19-102, 35-19-104, 35-19-105, 35-19-106, 35-19-107, 35-19-108, 35-19-201, 35-19-202, 35-19-203, 35-19-204, 35-19-205, 35-19-301, 35-19-302, 35-19-303, 35-19-304, 35-19-305, 35-19-306, 35-19-307, 35-19-308, 35-19-309, 35-19-310, 35-19-311, 35-19-312, 35-19-313, 35-19-314, AND 35-19-315, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 35-19-311, MCA, is amended to read:

“35-19-311. Refunds to members — retention of unclaimed refunds.

(1) Revenue of a buying cooperative for any fiscal year must, ~~unless otherwise determined by a vote of the members,~~ be distributed by the buying cooperative to its members as patronage refunds, prorated in accordance with the patronage of the buying cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the buying cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the buying cooperative coming due in the fiscal year;

~~(c) finance or provide a reserve for the financing of the construction or acquisition by the buying cooperative of additional facilities to the extent determined by the board of trustees;~~

~~(d)~~(c) provide a reasonable reserve for working capital; and

~~(e)~~(d) provide a reserve for the payment of indebtedness of the buying cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year.

(2) This section may not be construed to prohibit the payment by a buying cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

~~(3) A buying cooperative shall, upon the action of the board of trustees, retain redeemed patronage refunds that are allocated to its members and that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Unclaimed redeemed patronage refunds retained by the buying cooperative must be used for educational purposes. If a buying cooperative possesses redeemed patronage refunds, those funds must be distributed to members by December 31, 2011.”~~

Section 2. Repealer. (1) The following sections of the Montana Code Annotated are repealed:

35-19-101. Short title.

35-19-102. Definitions.

- 35-19-104. Permissible purpose of incorporation.
- 35-19-105. Name.
- 35-19-106. Incorporators.
- 35-19-107. Membership.
- 35-19-108. Exemption from taxes.
- 35-19-201. Powers of buying cooperative.
- 35-19-202. Restrictions on powers of buying cooperative.
- 35-19-203. Waiver of notice.
- 35-19-204. Nonliability of members, trustees, and officers.
- 35-19-205. Authority to take acknowledgments.
- 35-19-301. Articles of incorporation.
- 35-19-302. Amendment of articles of incorporation.
- 35-19-303. Change of principal office without amendment.
- 35-19-304. Bylaws.
- 35-19-305. Meetings of members.
- 35-19-306. Initiative by members — approval of trustees not required.
- 35-19-307. Board of trustees — number — qualifications — removal — compensation — joint memberships.
- 35-19-308. Trustees — term — quorum — powers.
- 35-19-309. Voting districts.
- 35-19-310. Officers.
- (2) The following sections of the Montana Code Annotated are repealed:
- 35-19-311. Refunds to members — retention of unclaimed refunds.
- 35-19-312. Disposition or encumbrance of property.
- 35-19-313. Dissolution of buying cooperative that has not commenced business.
- 35-19-314. Dissolution and winding up of buying cooperative that has commenced business.
- 35-19-315. Incorporation, amendment, and dissolution filings.

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. Transition. (1) Except as provided in subsection (2), an electricity buying cooperative in existence on [the effective date of this section] shall dissolve and wind up its affairs in accordance with 35-19-311 through 35-19-315.

(2) (a) An electricity buying cooperative shall honor terms and conditions of contracts executed on or before [the effective date of this section].

(b) Upon expiration of those contracts, an electricity buying cooperative shall dissolve and wind up its affairs within 1 year of the contract's expiration.

Section 5. Effective dates — contingency. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2(2)] is effective on the date that the secretary of state notifies the code commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed.

Approved March 25, 2011

CHAPTER NO. 68

[HB 176]

AN ACT PROVIDING THAT A PERSON WITH A LIFE-THREATENING ILLNESS MAY RECEIVE A ONE-TIME ANTELOPE LICENSE; ESTABLISHING TERMS AND CONDITIONS; AMENDING SECTION 87-2-706, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-706, MCA, is amended to read:

“87-2-706. Drawing for special antelope licenses — licenses for those with life-threatening illness. (1) In the event that the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, the licenses must be awarded by a drawing. The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) The department shall reserve for applicants who are nonambulatory and have a permanent physical disability, as determined by the department, up to 25 of the total special antelope licenses authorized for sale in the state, excepting those licenses issued pursuant to 87-2-803(5), for use in the district designated by the commission. If the number of valid disabled applicants exceeds the number of licenses available, the department may hold a drawing in which all applicants have an equal chance of being selected.

(3) (a) *The department may issue a special antelope license to a resident or nonresident who has been diagnosed with a life-threatening illness unless the person qualifies for a license pursuant to 87-2-805. 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 person’s life expectancy will not extend more than 1 year from the date of the request for the license unless the course of the disease is interrupted or abated.*

(b) *To qualify for the license, the department must receive documentation that person has been diagnosed with a life-threatening illness from a licensed physician.*

(c) *The license may be issued on a one-time basis for one hunting season.*

(d) *In exercising hunting privileges, the person must conduct all hunting within the terms and conditions of the license issued.*

(e) *The department may issue up to 25 licenses pursuant to this subsection (3) annually. These licenses do not count against any quota set by the department. Licenses issued pursuant to this subsection (3) do not count against the number of special antelope licenses reserved for people with permanent disabilities as provided in subsection (2).*

(3)(4) *The department may promulgate rules that are necessary to implement this section.”*

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

Approved March 25, 2011

CHAPTER NO. 69

[HB 233]

AN ACT REQUIRING CERTAIN QUALIFYING SMALL POWER PRODUCTION FACILITIES TO ACCEPT A RATE SCHEDULE APPROVED BY THE PUBLIC SERVICE COMMISSION; EXTENDING THE TIME WITHIN WHICH THE PUBLIC SERVICE COMMISSION IS REQUIRED TO RENDER A DECISION; AMENDING SECTION 69-3-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 69-3-603, MCA, is amended to read:

“69-3-603. (Temporary) Required sale of electricity under rates and conditions prescribed by commission. (1) *Except as provided in subsection (3), if a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).*

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within ~~±20~~ 180 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination ~~shall~~ *must* be made according to the standards prescribed in 69-3-604.

(3) (a) *If a qualifying small power production facility is eligible to sell electricity to a utility pursuant to a rate schedule approved by the commission, neither the qualifying small power production facility nor the utility may petition the commission in accordance with subsection (2) to authorize a rate or term different from that in the rate schedule.*

(b) *A qualifying small power production facility may file a complaint pursuant to 69-3-321 if the facility feels the rate schedule approved by the commission is unreasonable. (Repealed on occurrence of contingency—secs. 1, 3, Ch. 284, L. 2003—see part compiler’s comment.)”*

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

Section 3. 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 contracts executed on or after [the effective date of this act].

Approved March 25, 2011

CHAPTER NO. 70

[HB 252]

AN ACT PROHIBITING THE DEPARTMENT OF TRANSPORTATION FROM RECOVERING FROM CERTAIN TRANSIT PROVIDERS INDIRECT COSTS FOR U.S. FEDERAL TRANSIT ADMINISTRATION GRANTS; AND AMENDING SECTION 17-1-106, MCA.

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

Section 1. Section 17-1-106, MCA, is amended to read:

“17-1-106. (Temporary) Agency recovery of indirect costs — exemption. (1) An agency receiving nongeneral funds shall, in accordance with all applicable regulations, guidelines, or grant rules governing those funds, negotiate indirect cost reimbursement amounts and methodologies so that the agency may recover indirect costs.

(2) Except for funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, an agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) The department of transportation may not recover indirect costs from a local government for the community transportation enhancement program.

(4) *The department of transportation may not recover indirect costs for administration of a U.S. federal transit administration grant, including but not limited to grants provided for in 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, and 49 U.S.C. 5317, from a local government, nonprofit organization, or public transportation provider that provides transit services.*

(4)(5) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency’s ability to recover indirect costs that are otherwise allowable costs under the program, except for intra-agency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(5)(6) Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency. The department shall provide technical assistance to an agency on how to build an indirect cost proposal.

(6)(7) Except as provided for a unit of the university system under 20-25-427, indirect costs recovered by an agency to pay the agency’s indirect costs under 17-1-105 must be deposited as provided in 17-1-105. All other indirect costs must be deposited in the fund from which the indirect costs were originally paid. (Terminates June 30, 2011—sec. 82, Ch. 489, L. 2009.)

17-1-106. (Effective July 1, 2011) Agency recovery of indirect costs — exemption. (1) An agency receiving nongeneral funds shall, in accordance with all applicable regulations, guidelines, or grant rules governing those funds,

negotiate indirect cost reimbursement amounts and methodologies so that the agency may recover indirect costs.

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) The department of transportation may not recover indirect costs from a local government for the community transportation enhancement program.

(4) *The department of transportation may not recover indirect costs for administration of a U.S. federal transit administration grant, including but not limited to grants provided for in 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, and 49 U.S.C. 5317, from a local government, nonprofit organization, or public transportation provider that provides transit services.*

(4)(5) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intra-agency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(5)(6) Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency. The department shall provide technical assistance to an agency on how to build an indirect cost proposal.

(6)(7) Except as provided for a unit of the university system under 20-25-427, indirect costs recovered by an agency to pay the agency's indirect costs under 17-1-105 must be deposited as provided in 17-1-105. All other indirect costs must be deposited in the fund from which the indirect costs were originally paid."

Approved March 25, 2011

CHAPTER NO. 71

[HB 287]

AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MAKE WOLF CARCASSES OR PARTS OF WOLF CARCASSES RETRIEVED DURING WOLF MANAGEMENT ACTIVITIES AVAILABLE TO THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD; AUTHORIZING THE BOARD TO SELL OR AUCTION THE CARCASSES OR PARTS OF CARCASSES TO BENEFIT THE LIVESTOCK LOSS REDUCTION AND MITIGATION PROGRAM; AND AMENDING SECTIONS 2-15-3113 AND 87-1-217, MCA.

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

Section 1. Section 2-15-3113, MCA, is amended to read:

“2-15-3113. Additional powers and duties of livestock loss reduction and mitigation board. (1) The livestock loss reduction and mitigation board shall:

- (a) process claims;
- (b) seek information necessary to ensure that claim documentation is complete;
- (c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;
- (d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;
- (e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;
- (f) prepare the annual budget for the board; and
- (g) provide proper documentation of staff time and expenditures.

(2) The livestock loss reduction and mitigation board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss reduction and mitigation board shall:

- (a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;
- (b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;
- (c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;
- (d) adjudicate appeals of claims;
- (e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;
- (f) meet as necessary to conduct business; and
- (g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss reduction and mitigation board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114.”

Section 2. Section 87-1-217, MCA, is amended to read:

“87-1-217. Policy for management of large predators — legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

- (a) protect humans, livestock, and pets;
 - (b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and
 - (c) preserve citizens’ opportunities to hunt large game species.
- (2) As used in this section:
- (a) “large game species” means deer, elk, mountain sheep, moose, antelope, and mountain goats; and
 - (b) “large predators” means bears, mountain lions, and wolves.
- (3) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(4) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock, so long as the state objective for breeding pairs has been met. For the purposes of this subsection, “problem wolves” means any individual wolf or pack of wolves with a history of livestock predation.

(5) *The department shall work with the livestock loss reduction and mitigation board and the United States department of agriculture wildlife services to establish the conditions under which wolf carcasses or parts of wolf carcasses are retrieved during wolf management activities and when those carcasses or parts of carcasses are made available to the livestock loss reduction and mitigation board for sale or auction pursuant to 2-15-3113.”*

Approved March 25, 2011

CHAPTER NO. 72

[HB 356]

AN ACT REVISING THE DEFINITION OF ACCREDITED COLLEGE OR UNIVERSITY AS APPLIED TO ADDICTION COUNSELORS TO INCLUDE INSTITUTIONS OF HIGHER LEARNING THAT ARE ACCREDITED BY A NATIONAL ACCREDITING ASSOCIATION; AND AMENDING SECTION 37-35-102, MCA.

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

Section 1. Section 37-35-102, MCA, is amended to read:

“37-35-102. Definitions. As used in this chapter, the following definitions apply:

- (1) “Accredited college or university” means a college or university accredited by a regional *or national* accrediting association for institutions of higher learning.
- (2) “Addiction” means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs. The term includes chemical dependency as defined in 53-24-103.
- (3) “Department” means the department of labor and industry provided for in 2-15-1701.

(4) “Licensed addiction counselor” means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction counseling and who is licensed under the provisions of this chapter.”

Approved March 25, 2011

CHAPTER NO. 73

[HB 367]

AN ACT DELAYING IMPLEMENTATION OF THE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION PROGRAM; DELAYING USE OF THE SYSTEM FOR VEHICLE REGISTRATION PURPOSES UNTIL JANUARY 1, 2013; GRANTING THE DEPARTMENT OF JUSTICE RULEMAKING AUTHORITY TO DETERMINE A SCHEDULE FOR IMPLEMENTING THE PROGRAM; AMENDING SECTIONS 61-3-303, 61-3-312, 61-6-105, 61-6-157, AND 61-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-3-303, MCA, is amended to read:

“61-3-303. Original registration — process — fees. (1) Except as provided in 61-3-324, a Montana resident who owns 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 office of the county treasurer in the county where the owner is domiciled.

(2) Except as provided in subsection (3) and subsection (11), the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer 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 examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer 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 may register a motor vehicle, trailer, semitrailer, or pole trailer 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 may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

- (c) determine the vehicle's age, if required, under 61-3-501;
 - (d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and
 - (e) assign and issue license plates for the vehicle under 61-3-331.
- (5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:
- (a) the fees in lieu of tax or registration fees as required for:
 - (i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;
 - (ii) a motor home under 61-3-321;
 - (iii) a travel trailer under 61-3-321;
 - (iv) a motorcycle or quadricycle under 61-3-321;
 - (v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or
 - (vi) a trailer under 61-3-321;
 - (b) a donation of \$1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and
 - (c) a donation of \$1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.
- (6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).
- (7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.
- (8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.
- (9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.
- (b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

(11) Beginning ~~July 1, 2011~~ *January 1, 2013*, the 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. ~~Unless the verification system is temporarily unavailable, the county treasurer may not issue license plates to a motor vehicle when compliance with 61-6-301 cannot be verified.~~

Section 2. Section 61-3-312, MCA, is amended to read:

“61-3-312. Renewal of registration — exceptions — grace period. (1)

Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle’s registration period following the expiration of the motor vehicle’s registration.

(2) Except as provided in subsection (4), a person may renew a motor vehicle’s registration by submitting full payment for the fees or taxes required under 61-3-303 and 61-3-321(12) to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer may use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

(4) Beginning ~~July 1, 2011~~ *January 1, 2013*, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.

(5) Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

(6) The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle’s registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle’s registration period and ~~if, beginning July 1, 2011,~~ the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157.

(7) The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208.”

Section 3. Section 61-6-105, MCA, is amended to read:

“61-6-105. Department to administer law and make rules. (1) The department shall administer and enforce the provisions of this part and may make rules necessary for the administration of the system.

(2) The rules must:

(a) establish standards and procedures for accessing the system by authorized personnel of the department, the courts, law enforcement personnel, and any other entities authorized by the department that are consistent with specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) *determine a schedule for the implementation of the system, subject to the testing requirements in 61-6-157 and the time requirements in 61-3-303 and 61-3-312;*

~~(b)~~(c) provide for the suspension of a vehicle’s registration when:

(i) a person fails to respond to a written inquiry from the department or its designee concerning the insurance status of a vehicle;

(ii) a person misrepresents or provides false information to the department or its designee regarding the operational status or use of a vehicle for which liability insurance is mandatory;

(iii) the department has reason to believe that a vehicle owner is not complying with the mandatory liability insurance requirements of 61-6-301; or

(iv) the department receives a report from a court that a person has been convicted of a violation of 61-6-301 or 61-6-302 and the surrender of the vehicle registration receipt and license plates under 61-6-304 has been ordered;

~~(e)~~(d) prohibit the reinstatement of a vehicle’s registration and the new registration of a vehicle unless the applicable reinstatement fees have been paid;

~~(d)~~(e) set a fee for the reinstatement of a vehicle’s registration following a suspension imposed by the department. The fee may not exceed \$100 and is in addition to any other fine or penalty prescribed by the law.

~~(e)~~(f) provide for periodic insurance data file transfers from insurers under specifications and standards set forth in 61-6-157 to identify vehicles that are not covered by an insurance policy and to monitor ongoing compliance with mandatory vehicle liability insurance requirements;

~~(f)~~(g) provide for random checks to identify vehicles that are not covered by an insurance policy; and

~~(g)~~(h) provide for a hearing for a person aggrieved by a suspension order issued by the department under the provisions of this part.

(3) The department may adopt additional rules to:

(a) assist authorized users in interpreting responses received from the system and determining the appropriate action to be taken as a result of a response; and

(b) otherwise clarify system operations and business rules.”

Section 4. Section 61-6-157, MCA, is amended to read:

“61-6-157. Creation of online motor vehicle liability insurance verification system. (1) The department, in cooperation with the commissioner of insurance, shall establish an accessible common carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle owner or operator with motor vehicle liability policy requirements under

61-6-103, 61-6-301, and 61-6-302 and facilitate or monitor proof of financial responsibility filings under 61-6-133 and 61-6-134.

(2) The department may contract with a private vendor or vendors to establish and maintain the system.

(3) The system must:

(a) send requests to insurers for verification of motor vehicle liability insurance using electronic services established by the insurers, through the internet, world wide web, or a similar proprietary or common carrier electronic system in compliance with the specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) include appropriate provisions to secure its data against unauthorized access and to maintain a record of all requests and responses;

(c) be accessible, without fee, to authorized personnel of the department, the courts, law enforcement personnel, county treasurers, and authorized agents under the provisions of 61-3-116;

(d) interface, wherever possible, with existing department and law enforcement systems;

(e) receive insurance data file transfers from insurers under specifications and standards set forth in subsection (3)(a) to identify vehicles that are not covered by an insurance policy;

(f) provide a means by which low-volume insurers that are unable to deploy an online interface with the system can report insurance policy data to the department or its designee for inclusion in the system;

(g) provide a means to track separately or distinguish motor vehicles that are subject to a certificate of self-insurance under 61-6-143, a surety or indemnity bond under 61-6-137 or 61-6-301, or a deposit of cash or securities under 61-6-138;

(h) be available 24 hours a day, 7 days a week, subject to reasonable allowances for scheduled maintenance or temporary system failures, to verify the insurance status of any vehicle in a manner prescribed by the department; and

(i) ~~be installed and operational no later than July 1, 2011, following used only for information-gathering and educational purposes until the completion of an appropriate testing period of not less than 6 months.~~

(4) The provisions of Title 2, chapter 6, parts 1 and 2, do not apply to the information contained in the verification system.

(5) Every insurer shall cooperate with the department in establishing and maintaining the system and shall provide access to motor vehicle liability policy status information to verify liability coverage:

(a) for a vehicle insured by that company that is registered in this state; and

(b) if available, for a vehicle that is insured by that company or that is operated in this state and that is the subject of an accident investigation regardless of where the vehicle is registered.”

Section 5. Section 61-6-302, MCA, is amended to read:

“61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) Each owner or operator of a motor vehicle shall carry in the motor vehicle an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. If the card is issued under a commercial automobile insurance policy or a self-insured fleet, the card must indicate the status as "commercially insured" or "fleet". A motor vehicle owner or operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection.

~~(3) Beginning July 1, 2011, a person charged with violating subsection (2) may not be convicted if:~~

~~(a) the arresting officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system a request that provides proof of insurance valid at the time of arrest; or~~

~~(b) if the system under 61-6-157 is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest.~~

~~(4)(3) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:~~

~~(a) personally; or~~

~~(b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through available law enforcement systems, at the address maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.~~

~~(4) An owner or operator charged with violating subsection (2) may not be convicted if:~~

~~(a) the arresting officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that provides proof of insurance valid at the time of arrest; or~~

~~(b) if the system under 61-6-157 is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest."~~

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

Approved March 25, 2011

CHAPTER NO. 74

[HB 399]

AN ACT ALLOWING FOR THE TRANSFER OF A CERTIFICATE OF TITLE TO AN INSURANCE COMPANY WITH ELECTRONIC SIGNATURES; AMENDING SECTION 61-3-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-3-205, MCA, is amended to read:

“61-3-205. Transfer of ownership of vehicles by insurance company.

(1) ~~(a) When~~ *Except as provided in subsection (2), an insurance company or its adjuster that has taken possession of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile as a result of settling an insurance claim and that transfers ownership of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, it shall deliver to the transferee at the time of transfer a certificate of title signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, or a notary public.*

~~(2)(b)~~ *If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.*

(2) (a) The registered owner or owners may use an electronic signature pursuant to Title 30, chapter 18, part 1, on the certificate of title or on a limited power of attorney to assign ownership of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile. The department may prescribe the form of the limited power of attorney to be used for this purpose. A certificate of title transferred with an electronic signature does not require acknowledgment by the county treasurer, a deputy county treasurer, or a notary public. A power of attorney executed under authority of this subsection (2)(a) does not require notarization.

(b) A secured party may release a perfected security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile under this section by electronic signature pursuant to Title 30, chapter 18, part 1.”

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

Approved March 25, 2011

CHAPTER NO. 75

[HB 419]

AN ACT GENERALLY REVISING CAPTIVE INSURANCE COMPANY LAW; REVISING DEFINITIONS; REVISING MINIMUM CAPITAL SURPLUS REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR THE OPERATION OF CAPTIVE INSURANCE COMPANIES AND FOR INTERACTION BETWEEN CAPTIVE INSURANCE COMPANIES AND THEIR PROTECTED CELLS; REVISING QUALIFICATION FOR PROTECTED CELL SPONSORS AND PARTICIPANTS; AND AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-107, 33-28-202, 33-28-301, 33-28-302, AND 33-28-304, MCA.

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

Section 1. Section 33-28-101, MCA, is amended to read:

“33-28-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Affiliated company” means any company in the same corporate system as a parent, an industrial insured, or a member by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of sole proprietorships or business entities that has been in continuous existence for at least 1 year unless the 1-year requirement is waived by the commissioner and the members of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(3) "Association captive insurance company" means any company that insures risks of the members and the affiliated companies of members.

(4) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(5) "Branch captive insurance company" means any foreign captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(6) "Branch operations" means any business operations of a branch captive insurance company in this state.

(7) (a) "Business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, or other legal entity formed by an organizational document.

(b) The term does not include a sole proprietor.

(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, protected cell captive insurance company, *incorporated cell captive insurance company*, *special purpose captive insurance company*, or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

(9) "Captive reinsurance company" means a captive insurance company licensed in this state that reinsures the risk ceded by any other insurer.

(10) "Captive risk retention group" means a captive insurance risk retention group formed under the laws of this chapter and pursuant to Title 33, chapter 11.

(11) "Cash equivalent" means any short-term, highly liquid investment that is:

(a) readily convertible to known amounts of cash; and

(b) so near to its maturity that it presents insignificant risk of changes in value because of changes in interest rates. Only an investment with an original maturity of 3 months or less qualifies as a cash equivalent.

(12) (a) "Controlled unaffiliated business entity" means a business entity or sole proprietorship:

(i) that is not in a parent's corporate system consisting of the parent and affiliated companies;

(ii) that has an existing, controlling contractual relationship with the parent or an affiliated company; and

(iii) whose risks are managed by a pure captive insurance company.

(b) The commissioner may promulgate rules that further define a controlled unaffiliated business entity.

(13) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance that is in excess of a specified per-incident or aggregate limit established by the commissioner.

(14) "Foreign captive insurance company" means any captive insurance company formed under the laws of any jurisdiction other than this state.

(15) "*Incorporated cell*" means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company.

(16) "*Incorporated cell captive insurance company*" means a protected cell captive insurance company that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity.

~~(15)~~(17) "Industrial insured" means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(c) who has at least 25 full-time employees.

~~(16)~~(18) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

~~(17)~~(19) "Industrial insured group" means any group that meets either of the following:

(a) the group collectively:

(i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(ii) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) the group is a captive risk retention group.

~~(18)~~(20) "Member" means a sole proprietorship or business entity that belongs to an association.

~~(19)~~(21) "Mutual insurer" means a business entity without capital stock and with a governing body elected by the policyholders.

~~(20)~~(22) "Organizational document" means articles of incorporation, articles of organization, a partnership agreement, a subscribers' agreement, a charter, or any other document that establishes a business entity.

~~(21)~~(23) "Parent" means a sole proprietorship, business entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive insurance company.

~~(22)~~(24) "Participant" means a sole proprietorship or business entity and any affiliates that are insured by a protected cell captive insurance company in which the losses of the participant are limited through a participant contract to the participant's ~~pro rata~~ share of the assets of one or more protected cells identified in the participant contract.

~~(23)~~(25) "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

~~(24)~~(26) "Protected cell" means a separate account established by a protected cell captive insurance company formed or licensed under the provisions of this chapter, in which ~~assets are maintained for one or more participants~~ *an identified pool of assets and liabilities are segregated and insulated, as provided in this chapter, from the remainder of the protected cell captive insurance company's assets and liabilities* in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts.

(27) *"Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.*

~~(25)~~(28) "Protected cell captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or licensed under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.

(29) *"Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell captive insurance company.*

~~(26)~~(30) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.

~~(27)~~(31) "Sole proprietorship" means an individual doing business in a noncorporate form.

(32) *"Special purpose captive insurance company" means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.*

~~(28)~~(33) "Sponsor" means any entity that meets the requirements of 33-28-301 and 33-28-302 and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a protected cell captive insurance company."

Section 2. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing — authority. (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) *a special purpose captive insurance company may not provide insurance or reinsurance for risks unless approved by the commissioner;*

(d)(e) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers' compensation insurance on a direct basis; and

(e)(f) a protected cell captive insurance company may not insure any risks other than those of its participant affiliated companies and controlled unaffiliated business entities.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) (i) it appoints a registered agent to accept service of process;

(ii) the name and contact information and any subsequent changes regarding the registered agent are filed with the commissioner; and

(iii) it agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a business entity:

(A) file with the commissioner a certified copy of its organizational documents, a statement under oath of an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement

under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) In the event of any subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

- (i) the amount and liquidity of its assets relative to the risks to be assumed;
- (ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;
- (iii) the overall soundness of its plan of operation;
- (iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and
- (v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

- (i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;
- (ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;
- (iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and
- (iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

- (i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or

administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of \$300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

Section 3. Section 33-28-104, MCA, is amended to read:

"33-28-104. Minimum capital surplus — letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than \$250,000;

(b) in the case of an industrial insured captive insurance company, not less than \$500,000;

(c) in the case of an association captive insurance company, not less than ~~\$750,000~~ \$500,000; ~~or~~

(d) *in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma documents, including the nature of the risks to be insured;*

~~(d)~~(e) in the case of a protected cell captive insurance company, not less than \$500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection ~~(1)(d)~~ (1)(e) to an amount not less than \$250,000.

~~(e)~~(f) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through ~~(1)(d)~~ (1)(e), as determined based upon the organizational form of the foreign captive insurance company. The minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.

~~(f)~~(g) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner.”

Section 4. Section 33-28-107, MCA, is amended to read:

“33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) Except as provided in subsection (2)(b), on or before ~~March~~ *April* 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers. *On or before March 1 of each year, a captive risk retention group shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner and verified by oath by two of its executive officers.*

(b) A pure captive insurance company, branch captive insurance company, or industrial insured captive company, excluding captive risk retention groups, may make written application for filing the required report on a fiscal yearend basis. If an alternative reporting date is granted:

(i) the required report is due ~~60~~ *90* days after fiscal yearend; and

(ii) in order to provide sufficient information to support the premium tax return, a pure captive insurance company or industrial insured insurance company shall file a report acceptable to the commissioner prior to ~~March~~ *April* 1 of each year for the prior calendar yearend.

(c) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

(d) On or before ~~March~~ *April* 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

(3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

(4) (a) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a captive risk retention group may file using generally accepted accounting principles. The filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner.

(b) The commissioner may waive the RBC report required in 33-2-1903 for a captive risk retention group that files a report or statement pursuant to

subsection (4)(a) or for a captive risk retention group that was formed in the last 2 years.

(c) The filings in subsection (4)(a) are required on an annual and quarterly basis.”

Section 5. Section 33-28-202, MCA, is amended to read:

“33-28-202. Legal investments. (1) (a) An industrial insured captive insurance company, an association captive insurance company, and a captive risk retention group shall comply with the investment requirements contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions.

(b) The commissioner may approve the use of alternative reliable methods of valuation and rating.

(c) When a captive insurance company’s admitted assets total less than \$5 million, the commissioner may approve an investment of up to 20% of admitted assets in rated credit instruments in any one investment that meets the requirements of 33-12-303(1)(c).

(2) A pure captive insurance company *or protected cell captive insurance company* is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans to a parent company or any affiliate may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited.”

Section 6. Section 33-28-301, MCA, is amended to read:

“33-28-301. Protected cell captive insurance company. (1) One or more sponsors may form a protected cell captive insurance company, *which may be incorporated or unincorporated.*

(2) A protected cell captive insurance company formed or licensed under the provisions of this chapter ~~may establish and maintain one or more protected cells to insure risks of one or more participants;~~ *is* subject to the following conditions:

~~(a) The shareholders of the protected cell captive insurance company must be limited to its participants and sponsors.~~

(a) (i) *A protected cell captive insurance company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell captive insurance company with respect to each protected cell.*

(ii) *Upon the written approval of the commissioner of the plan of operation, which must include but is not limited to the specific business objectives and investment guidelines of the protected cell, the protected cell captive insurance company in accordance with the approved plan of operation may attribute to the protected cell insurance obligations with respect to its insurance business.*

(iii) *A protected cell must have its own distinct name or designation that must include the words “protected cell” or “incorporated cell”.*

(iv) *The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that*

protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(v) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurance company must be treated as a captive insurance company for purposes of this chapter, except for the application of 33-28-201. Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(b) All attributions of assets and liabilities between a protected cell and the protected cell captive insurance company's general account must be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets and liabilities may be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

(c) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell, and the protected cell captive insurance company may not be a trustee or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. A protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and is otherwise allowed under applicable law.

(d) This chapter may not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment adviser, commodity trading adviser, or other third party to manage the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third party are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(e) (i) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(A) separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(B) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(ii) If the provisions of this subsection (2)(e) are violated, the remedy of tracing is applicable to protected cell assets commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance

company's general account. The remedy of tracing may not be construed as an exclusive remedy.

(f) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves attributed to that protected cell.

~~(b)~~(3) Each protected cell must be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

~~(e)~~(4) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the protected cell captive insurance company.

~~(d)~~(5) A sale, exchange, or other transfer of assets may not be made by a protected cell captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

~~(e)~~(6) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

~~(f)~~(7) Each protected cell captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

~~(g)~~(8) Each protected cell captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meet its claim or expense obligations.

~~(h)~~(9) A participant contract may not take effect without the commissioner's prior written approval.

~~(i)~~(10) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the protected cell captive insurance company and may not be effective without the commissioner's prior written approval.

~~(j)~~(11) The business written by a protected cell captive insurance company, with respect to each cell, must be:

~~(i)~~(a) fronted by an insurance company licensed under the laws of any state;

~~(ii)~~(b) reinsured by a reinsurer authorized or approved by the commissioner;

or

~~(iii)~~(c) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with the following requirements:

~~(A)~~(i) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

(B)(ii) the commissioner may require the protected cell captive insurance company to increase the funding of any trust;

(C)(iii) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and

(D)(iv) the trust and trust instrument must be in a form and with terms approved by the commissioner.”

Section 7. Section 33-28-302, MCA, is amended to read:

“33-28-302. Qualification of sponsors. A sponsor of a protected cell captive insurance company must be an insurer licensed under the laws of any state, a reinsurer licensed under the laws of any state, a captive insurance company formed or licensed under this chapter, ~~or~~ an insurance producer licensed under chapter 17 of this title and approved by the commissioner, *or any other person approved by the commissioner.*”

Section 8. Section 33-28-304, MCA, is amended to read:

“33-28-304. Participants in protected cell captive insurance companies. (1) *A An individual or business entity may be a participant in a protected cell captive insurance company.*

(2) A sponsor may be a participant in a protected cell captive insurance company.

(3) A participant is not required to be a shareholder of a protected cell captive insurance company or its affiliate.

(4) ~~A participant shall insure only its own risks through a protected cell captive insurance company.”~~

Approved March 25, 2011

CHAPTER NO. 76

[SB 19]

AN ACT PROVIDING FOR THE FILING OF AN AFFIDAVIT OF DEATH FOR THE PURPOSES OF NONPROBATE TRANSFERS OF REAL PROPERTY; AND AMENDING SECTION 72-6-121, MCA.

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

Section 1. Section 72-6-121, MCA, is amended to read:

“72-6-121. Beneficiary deed — form — definitions. (1) A deed that conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner transfers the deceased owner’s interest to the grantee beneficiary designated by name in the beneficiary deed effective on the death of the owner, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner’s lifetime.

(2) A beneficiary deed may designate multiple grantees who take title as joint tenants with right of survivorship, tenants in common, or any other tenancy that is valid under the laws of this state.

(3) A beneficiary deed may designate a successor grantee beneficiary. If the beneficiary deed designates a successor grantee beneficiary, the deed must state

the condition on which the interest of the successor grantee beneficiary would vest.

(4) If real property is owned by persons as joint tenants with the right of survivorship, a deed that conveys an interest in the real property to a grantee beneficiary designated by all of the ~~then surviving~~ *then-surviving* owners and that expressly states that the deed is effective on the death of the last surviving owner transfers the interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a beneficiary deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship, the beneficiary deed is valid if the last surviving owner is one of the persons who executes the beneficiary deed. If the last surviving owner did not execute the beneficiary deed, the transfer lapses and the deed is void. An estate in joint tenancy with right of survivorship is not affected by the execution of a beneficiary deed that is executed by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of survivorship prevail over a grantee beneficiary named in a beneficiary deed. *A surviving person with an interest in real property subject to a beneficiary deed as provided in this section may execute an acknowledged statement that another person with an interest in the property is deceased. The statement must contain those matters specified in 7-4-2613(1)(c) and be recorded with the clerk and recorder in each county in which the real property or any part of the real property is located.*

(5) A beneficiary deed is valid only if the deed is executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the property is located, before the death of the owner or the last surviving owner. A beneficiary deed may be used to transfer an interest in real property to the trustee of a trust even if the trust is revocable.

(6) A beneficiary deed may be revoked at any time by the owner or, if there is more than one owner, by any of the owners who executed the beneficiary deed. To be effective, the revocation must be executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the real property is located, before the death of the owner who executes the revocation. If the real property is owned as joint tenants with right of survivorship and if the revocation is not executed by all the owners, the revocation is not effective unless executed by the last surviving owner.

(7) If an individual who is a recipient of medicaid pursuant to 53-6-131 conveys an interest in real property by means of a beneficiary deed, the department of public health and human services may assert a claim pursuant to 53-6-167 against the property that is the subject of a beneficiary deed to the extent of medical assistance granted by the department.

(8) If an owner executes and records more than one beneficiary deed concerning the same real property, the last beneficiary deed that is recorded before the owner's death is the effective beneficiary deed.

(9) This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

(10) The signature, consent, or agreement of, or notice to, a grantee beneficiary of a beneficiary deed is not required for any purpose during the lifetime of the owner.

(11) A beneficiary deed that is executed, acknowledged, and recorded in accordance with this section is not revoked by the provisions of a will.

(12) The death of an owner of real property must, for the purposes of this section, be proved by ~~affidavit or certificate of death~~ *an acknowledged statement that a person with an interest in the property is deceased. The statement must contain the matters specified in 7-4-2613(1)(c) and be recorded with the clerk and recorder in each county in which the real property or any part of the real property is located.*

(13) A beneficiary deed is sufficient if it complies with other applicable law and if it is in substantially the following form:

Beneficiary Deed

I (we) (owner) hereby convey to
(grantee beneficiary) effective on my (our) death the following described real property:

(Legal description)

If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary must either (choose one):

- Become void.
- Become part of the estate of the grantee beneficiary.

.....
(Dated)

.....
(Signature of grantor(s))
(acknowledgment)

(14) An instrument revoking a beneficiary deed is sufficient if it complies with other applicable laws and is in substantially the following form:

Revocation of Beneficiary Deed

The undersigned hereby revokes the beneficiary deed recorded on
(date), in docket or book at page, or instrument number,
records of County, Montana, concerning the following described
real property:

(Legal description)

Dated:

.....
Signature
(acknowledgment)

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

- (a) "Beneficiary deed" means a deed authorized by this section.
- (b) "Grantee beneficiary" or "grantee" means the person to whom an owner grants an interest in the real property that is the subject of the beneficiary deed.
- (c) "Owner" means a person who executes a beneficiary deed as provided in this section."

Approved March 25, 2011

CHAPTER NO. 77

[SB 203]

AN ACT ALLOWING THE SALE AND FURNISHING OF BEER BY ON-PREMISES RETAILERS IN GROWLERS FOR OFF-PREMISES CONSUMPTION; AMENDING SECTIONS 16-1-106 AND 16-3-303, 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) "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.

(11) "*Growler*" means any refillable, resealable container complying with federal law.

~~(11)~~(12) "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 6.9% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

~~(12)~~(13) "Immediate family" means a spouse, dependent children, or dependent parents.

~~(13)~~(14) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(14)~~(15) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

~~(15)~~(16) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

~~(16)~~(17) "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(17)~~(18) "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, 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.

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

(19)(20) "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.

(20)(21) "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.

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

(22)(23) "Sacramental wine" means wine that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

(23)(24) "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.

(24)(25) "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.

(25)(26) "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.

(26)(27) "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.

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

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

(29)(30) "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.

(30)(31) "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 16-3-303, MCA, is amended to read:

"16-3-303. Sale of beer by retailer for consumption off premises. It shall be lawful for such an on-premises retailer to sell or furnish beer to the public in its original package or in growlers with intent that such and the beer

shall *must* be taken away from the premises of ~~such~~ *the* retailer for consumption off the premises of ~~such~~ *the* retailer. *Growlers may not be filled in advance of sale and may be furnished by the consumer.*”

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

Approved March 25, 2011

CHAPTER NO. 78

[SB 211]

AN ACT REVISING THE SALVAGE MOTOR VEHICLE TITLE LAW BY CHANGING A VEHICLE AGE RESTRICTION; AND AMENDING SECTION 61-3-211, MCA.

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

Section 1. Section 61-3-211, MCA, is amended to read:

“61-3-211. Surrender of certificate of title — issuance of salvage certificate — salvage retitling requirements. (1) An insurer acquiring ownership of a motor vehicle ~~that is less than 5 years of age and that is less than 15 years of age~~ and that the insurer determines to be a salvage vehicle shall surrender the certificate of title to the department within 15 days after acquiring the certificate of title. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of title, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of title and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of title, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of title to the department. Upon receipt of the certificate of title from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of title in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of title or a comparable ownership document.

(5) At the time of surrender of a certificate of title for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of \$5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 61-3-225.”

Approved March 25, 2011

CHAPTER NO. 79

[SB 256]

AN ACT REVISING LAWS RELATING TO REAL ESTATE BROKERS AND SALESPERSONS TO CLARIFY THE RIGHTS AND OBLIGATIONS OF A SUPERVISING BROKER; AND AMENDING SECTIONS 37-51-302, 37-51-305, 37-51-308, 37-51-309, AND 37-51-602, MCA.

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

Section 1. Section 37-51-302, MCA, is amended to read:

“37-51-302. Broker’s or salesperson’s license — qualifications of applicant — supervising broker endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner that safeguards the interests of the public.

(2) An applicant for a broker’s license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson’s license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson’s license:

- (i) must be at least 18 years of age;
 - (ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;
 - (iii) shall file an application for a license with the department; and
 - (iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.
- (b) The application must be accompanied by the recommendation of ~~the~~ *a* licensed broker *with a supervising broker endorsement* by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.
- (5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.
- (6) (a) An applicant for a supervising broker endorsement must meet the education and experience requirements established by the board by rule except that:
- ~~(i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention to obtain the endorsement;~~
 - ~~(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed salespersons;~~
 - ~~(iii) continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.~~
- (b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement.
- (c) *The board may adopt rules allowing a salesperson to temporarily associate with a broker with a supervising broker endorsement other than the supervising broker listed on the salesperson's pocket card.*

Section 2. Section 37-51-305, MCA, is amended to read:

- “37-51-305. License — delivery — display — pocket card.** (1) A license must bear the seal of the board.
- (2) The license of a real estate salesperson must be delivered or mailed to the ~~real estate salesperson's supervising~~ broker ~~with whom the real estate salesperson is associated~~ and must be kept in the custody and control of the *supervising* broker.
- (3) A broker shall display the broker's own license conspicuously in the broker's place of business.
- (4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period for which fees have

been paid and, on a real estate salesperson's cards only, the name and address of the *salesperson's supervising* broker ~~with whom the real estate salesperson is associated.~~"

Section 3. Section 37-51-308, MCA, is amended to read:

"37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and, *if the broker is a supervising broker*, the original license of each salesperson associated or under contract with the broker ~~shall~~ *must* be prominently displayed in the office. The address of the office and any branch office ~~shall~~ *must* be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days ~~thereafter of removal~~, designating the new location of this office and paying the required fee; ~~whereupon. After receipt of the information required under this subsection, the department shall issue~~ a license for the new location ~~must be issued~~ for the unexpired period."

Section 4. Section 37-51-309, MCA, is amended to read:

"37-51-309. Broker — salesperson — personal transactions of salesperson — notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one licensed *supervising* broker or perform services for a broker *with a supervising broker endorsement* other than the one designated on the license issued to the salesperson *except on a temporary basis as provided in 37-51-302*.

(2) When a licensed salesperson desires to change association or contractual relationship from one licensed *supervising* broker to another, the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued. A salesperson may not directly or indirectly work for or with a *supervising* broker until the salesperson has been issued a license to work for or with that *supervising* broker. On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's *supervising* broker, who shall return it to the department for cancellation.

(3) Only one license may be issued to a salesperson to be in effect at one time.

(4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal transactions, and the provisions of this chapter do not require a *supervising* broker to exercise any supervision or provide any training for a salesperson with respect to personal transactions of the salesperson.

(b) A *supervising* broker is not responsible or liable for the personal transactions of a salesperson: *if*:

(i) *the personal transaction does not involve the salesperson's supervising broker or real estate firm; and*

(e)(ii) ~~Prior~~ *prior* to entering into a personal transaction, ~~a~~ *the* salesperson ~~shall disclose~~ *discloses* in writing to the other party that the transaction is a personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's *supervising* broker or real estate firm.

(5) For the purposes of this part, "personal transaction" includes the following:

(a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

(b) the leasing or renting of real property owned by the salesperson.”

Section 5. Section 37-51-602, MCA, is amended to read:

“37-51-602. Definition of property management — exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

- (a) a relative of the owner of the real estate, defined as follows:
 - (i) a son or daughter of the property owner or a descendant of either;
 - (ii) a stepson or stepdaughter of the property owner;
 - (iii) a brother, sister, stepbrother, or stepsister of the property owner;
 - (iv) the father or mother of the property owner or the ancestor of either;
 - (v) a stepfather or stepmother of the property owner;
 - (vi) a son or daughter of a brother or sister of the property owner;
 - (vii) a brother or sister of the father or mother of the property owner;
 - (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or
 - (ix) the spouse of the property owner;
- (b) a person who leases no more than four residential real estate units;
- (c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.
- (d) an attorney at law in the performance of duties as an attorney;
- (e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;
- (f) an officer of the state or any of its political subdivisions in the conduct of official duties;
- (g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;
- (h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;
- (i) a person employed by the owner of the real estate if that person’s property management duties are incidental to the person’s other employment-related duties; or
- (j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under ~~the supervision of a real estate 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 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].

Approved March 25, 2011

CHAPTER NO. 80

[SB 258]

AN ACT REVISING TOW TRUCK LAWS; REVISING THE DEFINITION OF "COMMERCIAL TOW TRUCK"; AND AMENDING SECTIONS 61-8-904 AND 61-9-416, MCA.

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

Section 1. Section 61-8-904, MCA, is amended to read:

"61-8-904. Prohibition — exception. (1) A commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operator complies with the provisions of 61-8-906(1) and 61-8-907.

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of this part.

(3) ~~Sections~~ *Except as provided in 61-9-416, the provisions of* 61-8-901 through 61-8-908 and 61-8-910 do not apply to a commercial tow truck operator that does not operate for compensation."

Section 2. Section 61-9-416, MCA, is amended to read:

"61-9-416. Commercial tow truck definition — requirements. (1) "Commercial tow truck" means a motor vehicle operating for compensation that is equipped with specialized equipment designed and intended for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways. *If a tow truck owner or operator's business profits or benefits in any way from towing a vehicle, the tow truck must be considered a commercial tow truck for the purposes of Title 61, chapter 8, and this chapter.*

(2) A commercial tow truck must be equipped with:

(a) not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) at least two highway warning signs as provided in 61-9-431.

(c) a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) a lamp emitting a flashing red or amber light meeting the requirements of 61-9-402(7), or both a red and amber light, mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted so that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in a position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red or amber lights of an approved type may be displayed at either side or both sides of the tow truck during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle that is to be towed;

(f) a shovel, and whenever practical, the tow truck operator engaged to remove a disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle; and

(g) a portable electrical extension cord or other device for use in displaying stop, turn, and taillamps on the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined vehicles. When a disabled vehicle is towed, the tow truck operator shall provide for the rear light that is capable of displaying a stop signal, turn signal, and taillamps by means of the extension cord or other device referred to in this subsection.

~~(2)~~(3) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of a portion of the roadway, place a highway warning sign as required in 61-9-431.

~~(3)~~(4) The owner or operator of a commercial tow truck who complies with the requirements of 61-8-906 and 61-8-907 and this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

~~(4)~~(5) A commercial tow truck company that is in compliance with 61-9-431 and that is operating 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 61-9-402(5).”

Approved March 25, 2011

CHAPTER NO. 81

[SB 289]

AN ACT INCREASING THE AMOUNT OF LIQUOR DISTILLED AT A MICRODISTILLERY THAT MAY BE SOLD TO A CUSTOMER FOR OFF-PREMISES CONSUMPTION; 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;
- (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 consumption on the premises between 10 a.m. and 8 p.m. A microdistillery may not sell or give more than 2 ounces of liquor to an individual for on-premises consumption during a business day.

(b) sell liquor that it produces at retail at the distillery directly to the consumer for off-premises consumption if:

- (i) not more than ~~1 liter~~ 1.75 liters a day is sold to an individual; and
- (ii) the minimum retail price as determined by the department is charged.”

Approved March 25, 2011

CHAPTER NO. 82

[SB 335]

AN ACT REDUCING THE AMOUNT OF TIME DURING WHICH THE DEPARTMENT OF ADMINISTRATION MAY REPLACE A STALE-DATED WARRANT; REDUCING THE LENGTH OF TIME THAT A STALE-DATED WARRANT MUST BE RETAINED IN THE PRIVATE PURPOSE TRUST FUND; AMENDING SECTION 17-8-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17-8-303, MCA, is amended to read:

“17-8-303. Warrants — presentation and cancellation. (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state treasury must be presented for payment within 6 months after the date of issue.

(b) Warrants issued for the department of public health and human services that are funded to any extent with federal money must be presented for payment within 180 days after the date of issue.

(2) If the payee or legal holder of any warrant fails to present it for payment within the time specified in subsection (1), the state treasurer shall record the warrant as stale-dated and the amount must be credited to a separate private purpose trust fund account administered by the treasurer. If the payee or legal owner of a stale-dated warrant presents it for payment or presents a claim for payment within ~~4 years~~ 1 year from the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu of the stale-dated warrant.

(3) ~~Three years and~~ Six months after being stale-dated, the warrant must be classed as unclaimed property subject to the provisions of Title 70, chapter 9, part 8. If the payee or legal owner of a stale-dated warrant presents it for payment or presents a claim for payment, the presentation must be to the department of revenue as provided in 70-9-815.”

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved March 25, 2011

CHAPTER NO. 83

[HB 28]

AN ACT REQUIRING THAT PROPOSED DRAINFIELD MIXING ZONES BE LOCATED WHOLLY WITHIN THE SUBDIVISION WHERE THE DRAINFIELD IS LOCATED OR ON AN ADJOINING RIGHT-OF-WAY; ALLOWING LOCATION OF A DRAINFIELD MIXING ZONE OUTSIDE THE SUBDIVISION IF AN EASEMENT OR OTHER AUTHORIZATION IS OBTAINED; AMENDING SECTION 76-4-104, 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 76-4-104, 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 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater

systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) *adequate evidence that a proposed drainfield mixing zone is located wholly within the boundaries of the proposed subdivision where the drainfield 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 outside the boundaries of the proposed subdivision where the drainfield is located. A mixing zone may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b).*

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through ~~(6)(h)~~ (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat; and

(~~k~~)(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than 50 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 60 days after the submission of a complete application, as provided in 76-4-125.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622.”

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

Section 3. Applicability. [This act] applies to subdivision applications received on or after [the effective date of this act].

Approved March 30, 2011

CHAPTER NO. 84

[HB 37]

AN ACT MODIFYING VEGETATIVE COVER OF WATER FACILITY STANDARDS FOR FINAL BOND RELEASE AT COAL AND URANIUM MINES; ELIMINATING THE CONTINGENT VOIDNESS SECTION RELATED TO FEDERAL APPROVAL OF MODIFICATIONS TO THE VEGETATIVE COVER STANDARDS; AMENDING SECTION 82-4-235, MCA; REPEALING SECTION 2, CHAPTER 72, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

“82-4-235. (Temporary) Determination of successful revegetation — final bond release. (1) Success of revegetation must be judged on the

effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water management facilities and other support facilities include ~~but are not limited to~~ sedimentation ponds, diversions, other water management structures, soils stockpiles, *and* access roads, ~~segments of haul roads, and electrical substations.~~

(b) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise meets the reclamation standards in subsection (1).

(4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection

with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2). (~~Void on occurrence of contingency—sec. 2, Ch. 72, L. 2009.~~)

~~82-4-235. (Effective on occurrence of contingency) Determination of successful revegetation — final bond release.~~ (1) ~~Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:~~

~~(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;~~

~~(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;~~

~~(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;~~

~~(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;~~

~~(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and~~

~~(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.~~

~~(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.~~

~~(3) (a) Notwithstanding the provision in subsection (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:~~

~~(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and~~

~~(ii) at least one of the following conditions exists:~~

~~(A) the standards of 82-4-233(1) are otherwise achieved;~~

~~(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;~~

~~(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or~~

~~(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.~~

~~(b) On lands that meet the criteria described in subsection (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."~~

Section 2. Repealer. Section 2, Chapter 72, Laws of 2009, is repealed.

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

Approved March 30, 2011

CHAPTER NO. 85

[HB 52]

AN ACT PROVIDING RULEMAKING AUTHORITY TO THE BOARD OF ENVIRONMENTAL REVIEW TO REGULATE RECLAIMED WASTEWATER FROM PUBLIC SEWAGE SYSTEMS; DEFINING "RECLAIMED WASTEWATER"; AUTHORIZING THE ADOPTION OF TREATMENT STANDARDS AND MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS; AND AMENDING SECTIONS 75-6-102 AND 75-6-103, MCA.

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

Section 1. Section 75-6-102, MCA, is amended to read:

“75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Board” means the board of environmental review provided for in 2-15-3502.

(2) “Certified source water protection area” means an area certified by the department that identifies the surface and subsurface area surrounding a source of water for a public water supply system through which contaminants may move toward and reach the source of supply.

(3) “Community water system” means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) “Contamination” means impairment of the quality of state waters by sewage, industrial waste, or other waste creating a hazard to human health.

(5) “Cross-connection” means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

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

(7) “Drainage” means rainfall, surface, and subsoil water.

(8) “Industrial waste” means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(9) “Maximum contaminant level” means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

(10) “Other waste” means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(11) “Person” means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

(12) (a) “Pollution” means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(13) “Public sewage system” means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

(14) “Public water supply system” means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water

bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

(15) *“Reclaimed wastewater” means wastewater that is treated by a public sewage system for reuse for private, public, or commercial purposes.*

(15)(16) *“Safe Drinking Water Act” means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.*

(16)(17) *“Sewage” means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.*

(17)(18) *“Source water protection program” means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.*

(18)(19) *“State waters” means a body of water, irrigation system, or drainage system, either surface or underground.*

(19)(20) *“Transient noncommunity water system” means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year.”*

Section 2. Section 75-6-103, MCA, is amended to read:

“75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system, including requirements to remedy:

(i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(ii) fecal contamination in water used by a public water supply system; or

(iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; ~~and~~

(k) *(i) allowable uses of reclaimed wastewater and classification of those uses;*

(ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;

(iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and

(iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and

(l) any other requirement necessary for the protection of public health as described in this part.

(3) Board rules must provide for the following:

(a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The board may issue orders necessary to fully implement the provisions of this part."

Approved March 30, 2011

CHAPTER NO. 86

[HB 63]

AN ACT RELATING TO LIQUOR LICENSE ADMINISTRATION; PERMITTING CERTAIN OUT-OF-STATE RESIDENTS TO PROTEST LIQUOR LICENSE APPLICATIONS FROM ADJOINING MONTANA COUNTIES; REMOVING THE PROVISION THAT LIQUOR LICENSE APPLICATION PROTESTS MAY BE MADE BASED SOLELY ON CREDITOR STATUS; ALLOWING NONPROFIT AND TAX-EXEMPT ORGANIZATIONS TO AUCTION OR RAFFLE ALCOHOLIC BEVERAGES FOR FUNDRAISING PURPOSES; AMENDING SECTION 16-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-4-207, MCA, is amended to read:

“16-4-207. Notice of application — investigation — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon 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 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 ~~a person who has extended credit to the transferor or by~~ residents of the county from which the application comes, ~~or residents of adjoining Montana counties, or residents of adjoining counties in another state if the criteria in subsection (4)(d) are met.~~ Protests ~~may~~ must be mailed to ~~a named administrator~~ in 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. Notice may be substantially in the following form:

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). ~~A person who has extended credit to the transferor and residents~~ 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

.....
ADMINISTRATOR

(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.

(3) (a) If the ~~administrator~~ *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 (5) 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 a liquor license application in that state or county. The department may, by rule, establish how the certification is to be made."*

Section 2. 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 licensed under the provisions of this code, excluding a restaurant beer and wine licensee;

(b) purchased 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.

(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 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 16, chapter 3, part 3, and the provisions of Title 16, chapter 3, part 3, apply to [section 2].

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 March 30, 2011

CHAPTER NO. 87

[HB 126]

AN ACT CLARIFYING THAT THE SENTENCING AUTHORITY OF THE DISTRICT COURT INCLUDES THE AUTHORITY TO SENTENCE A YOUTH FOR ANY OTHER OFFENSE THAT ARISES DURING THE COMMISSION OF AN OFFENSE FOR WHICH THE DISTRICT COURT MAY ALREADY SENTENCE; AND AMENDING SECTION 41-5-206, MCA.

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

Section 1. Section 41-5-206, MCA, is amended to read:

“41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney’s discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

- (i) sexual intercourse without consent as defined in 45-5-503;
- (ii) deliberate homicide as defined in 45-5-102;
- (iii) mitigated deliberate homicide as defined in 45-5-103;
- (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or
- (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) negligent homicide as defined in 45-5-104;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) sexual assault as provided in 45-5-502(3);
- (v) assault with a weapon as defined in 45-5-213;
- (vi) robbery as defined in 45-5-401;
- (vii) burglary or aggravated burglary as defined in 45-6-204;
- (viii) aggravated kidnapping as defined in 45-5-303;
- (ix) possession of explosives as defined in 45-8-335;
- (x) criminal distribution of dangerous drugs as defined in 45-9-101;
- (xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);
- (xii) criminal possession with intent to distribute as defined in 45-9-103(1);
- (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;
- (xv) escape as defined in 45-7-306;

(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1) *and any offense that arose during the commission of a crime enumerated in subsection (1)*, the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. *If a youth is acquitted in district court of all offenses enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which the youth is found guilty.* A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth

is kept in an area that provides physical separation from adults accused or convicted of criminal offenses.”

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

Approved March 30, 2011

CHAPTER NO. 88

[HB 181]

AN ACT ALLOWING A CONDOMINIUM UNIT TO BE COUNTED INDIVIDUALLY FOR PURPOSES OF A MUNICIPAL ZONING PROTEST; AMENDING SECTION 76-2-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-2-305, MCA, is amended to read:

“76-2-305. Alteration of zoning regulations — protest. (1) A regulation, restriction, and boundary may be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice apply equally to all changes or amendments.

(2) An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city or town council or legislative body of the municipality if a protest against a change pursuant to subsection (1) is signed by the owners of 25% or more of:

(a) the area of the lots included in any proposed change; or

(b) those lots or units, as defined in 70-23-102, 150 feet from a lot included in a proposed change.

(3) (a) *For purposes of subsection (2), each unit owner is entitled to have the percentage of the unit owner’s undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner’s undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located.*

(b) *The percentage of the unit owner’s undivided interest must be certified as correct by the unit owner seeking to protest a change pursuant to subsection (2) or by the presiding officer of the association of unit owners.”*

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

Approved March 30, 2011

CHAPTER NO. 89

[HB 255]

AN ACT DESIGNATING MARCH 30 AS WELCOME HOME VIETNAM VETERANS DAY FOR THE STATE OF MONTANA.

WHEREAS, the United States became involved in a war in the former Republic of South Vietnam to stop the spread of communism to that country; and

WHEREAS, by 1969, a peak of approximately 543,000 members of the armed forces of the United States were serving in the former South Vietnam; and

WHEREAS, more than 58,000 members of the armed forces lost their lives in Vietnam and more than 300,000 members were wounded; and

WHEREAS, by March 30, 1973, combat and combat support units had left Vietnam; and

WHEREAS, the Vietnam War was an extremely divisive issue among the people of the United States and caused a generation of veterans to be criticized for participation in a war that was the official policy of four presidential administrations in the United States government, a policy that Vietnam veterans themselves could not control; and

WHEREAS, the establishment of a Welcome Home Vietnam Veterans Day would provide an appreciation that Vietnam veterans deserve for their service but did not receive at the time of their homecoming; and

WHEREAS, establishment of a Welcome Home Vietnam Veterans Day would also promote awareness of the faithful service of Vietnam veterans, promote awareness of their contributions to the country, and recognize the assistance that veterans of the war in Vietnam are providing to the returning veterans of the wars in Iraq and Afghanistan in recovering from their wounds, both seen and unseen, and in supporting the reintegration of these new veterans back into civilian life.

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

Section 1. Welcome home Vietnam veterans day. There is established a welcome home Vietnam veterans day for the state of Montana. The welcome home Vietnam veterans day is March 30 of each year and commemorates the day in 1973 when all combat units and combat support units arrived home from the former South Vietnam.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

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

Approved March 30, 2011

CHAPTER NO. 90

[HB 426]

AN ACT REQUIRING WRITTEN CONSENT OF PROPERTY OWNERS FOR CERTAIN KINDS OF LAND TO BE INCLUDED IN A PROPOSED NEW CITY OR TOWN; AND AMENDING SECTION 7-2-4101, MCA.

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

Section 1. Section 7-2-4101, MCA, is amended to read:

“7-2-4101. Petition to organize city or town. (1) Whenever the inhabitants of any part of a county desire to organize as a city or town, the inhabitants may apply by petition, signed by not less than 300 registered electors or two-thirds of the registered electors, whichever is less, who are residents of the state and residing within the limits of the proposed city or town,

to the board of county commissioners of the county in which the proposed area is situated.

(2) (a) The petition must describe the limits of the proposed city or town and wards of the proposed city or town. A proposed ward must contain 50 or more registered electors and must have at least 200 inhabitants for each square mile of land area.

(b) The proposed city or town must contain a post office within the proposed area of the city or town.

(c) *Land used for production agriculture in tracts larger than 160 acres and land and facilities used for electric power generation, refining, or smelting may not be included in a proposed city or town without the written consent of the owners of the land.*

(e)(d) The petitioners shall attach to the petition a map of the proposed area to be incorporated and state the name of the proposed city or town.

(3) The petition and map must be filed in the office of the election administrator.”

Approved March 30, 2011

CHAPTER NO. 91

[SB 32]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES; PROVIDING THAT THE STATE COMPENSATION INSURANCE FUND AND BOARD BE INCLUDED UNDER THE ECONOMIC AFFAIRS INTERIM COMMITTEE; PROVIDING THAT THE OFFICE OF STATE PUBLIC DEFENDER BE INCLUDED UNDER THE LAW AND JUSTICE INTERIM COMMITTEE; AMENDING SECTIONS 5-5-223, 5-5-226, AND 5-5-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 5-5-223, MCA, is amended to read:

“5-5-223. Economic affairs interim committee. The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (1) department of agriculture;
- (2) department of commerce;
- (3) department of labor and industry;
- (4) department of livestock;
- (5) office of the state auditor and insurance commissioner; ~~and~~
- (6) office of economic development; *and*

(7) *the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019.*”

Section 2. Section 5-5-226, MCA, is amended to read:

“5-5-226. Law and justice interim committee. The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for *the office of state public*

defender, the department of corrections, and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary.”

Section 3. Section 5-5-228, MCA, is amended to read:

“5-5-228. State administration and veterans’ affairs interim committee. (1) The state administration and veterans’ affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, *unless otherwise assigned by law*, the entities attached to the agencies for administrative purposes:

(a) department of administration, *except*:

(i) *the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019; and*

(ii) *the office of state public defender;*

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state’s public employee retirement systems, based on reports from the teachers’ retirement board, the public employees’ retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state’s public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;

(d) solicit and review proposed statutory changes to any of the state’s public employee retirement systems;

(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:

(i) a summary of the fiscal implications of the proposal;

(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

(iii) an analysis of the soundness of the proposal as a matter of public policy;

(iv) any amendments proposed by the committee; and

(v) the committee’s recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee’s report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators’ use, information on the state’s public employee retirement systems.

(3) The committee may:

(a) specify the date by which proposals affecting a retirement system must be submitted to the committee for the review contemplated under subsection (2)(d); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request.”

Section 4. Effective date. [This act] is effective on passage and approval.
Approved March 30, 2011

CHAPTER NO. 92

[SB 34]

AN ACT REVISING THE LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES; PROVIDING THAT THE LEGISLATIVE COUNCIL MAY ASSIGN AN ENTITY THAT IS ADMINISTRATIVELY ATTACHED TO AN AGENCY TO A DIFFERENT INTERIM COMMITTEE UPON PETITION; PROVIDING THAT APPOINTING AUTHORITIES ATTEMPT TO APPOINT TO EACH INTERIM COMMITTEE A MEMBER OF THE JOINT SUBCOMMITTEE CONSIDERING RELATED AGENCY BUDGETS; AMENDING SECTIONS 5-5-202 AND 5-5-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

“5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, water policy committee, and state-tribal relations committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

- (a) economic affairs committee;
- (b) education and local government committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue and transportation committee; and
- (g) state administration and veterans' affairs committee.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee. *If there is an entity that is attached to an agency for administrative purposes under the jurisdiction of an interim committee and another interim committee has a justification to seek jurisdiction and petitions the legislative council, the legislative council may assign that entity to the interim committee seeking jurisdiction unless otherwise provided by law.*”

Section 2. Section 5-5-211, 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 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 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2011

CHAPTER NO. 93

[SB 38]

AN ACT REVISING LAWS RELATED TO STATE TRUST LAND INTEREST AND INCOME REVENUE; DEFINING “STATE TRUST LAND”; AMENDING SECTIONS 20-9-342 AND 77-1-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-9-342, MCA, is amended to read:

“20-9-342. Deposit of interest and income money by state board of land commissioners. Except as provided in 20-9-516, the state board of land

commissioners shall ~~annually~~ deposit the interest and income money for each ~~calendar~~ fiscal year into the guarantee account, provided for in 20-9-622, for state equalization aid by the last business day of February ~~and June following the calendar~~ before the close of the fiscal year in which the money was received.”

Section 2. Section 77-1-101, MCA, is amended to read:

“77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) “Board” means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) “Commercial or concentrated recreational use” means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) “Distributable revenue” applies to all land trusts managed by the board, except property held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, and includes:

(a) 95% of all revenue from the management of school trust lands and the common school permanent fund, *except for mineral royalties or land sale proceeds that are deposited directly in the permanent fund*;

(b) ~~95%~~ of the interest and income described in 20-9-341, less any unrealized gains or losses;

(c) the *interest and* income received from the leasing, licensing, or other use of state trust lands; and

(d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building land grant and university system lands.

(5) (a) “General recreational use” includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) The term does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(6) “Legally accessible state lands” means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

(7) “Noxious weeds” or “weeds” means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(a) as a statewide noxious weed by rule of the department of agriculture; or

(b) as a district noxious weed by a district weed board organized under 7-22-2103.

(8) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through investments under the provisions of 17-6-201.

(9) "State trust land" means lands or property interests held in trust by the state:

(a) under Article X, sections 2 and 11, of the Montana constitution;

(b) through The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended; and

(c) through the operation of law for specified trust beneficiaries.

(9)(10) "Weed management" or "control" has the meaning provided in 7-22-2101."

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 July 1, 2011.

Approved March 30, 2011

CHAPTER NO. 94

[SB 47]

AN ACT CLARIFYING THE POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW RELATED TO AIR QUALITY PERMITTING AND RULEMAKING FOR FORESTRY EQUIPMENT; AMENDING SECTION 75-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage

of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(c) forestry equipment and its associated engine used for forestry practices that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.”

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

Approved March 30, 2011

CHAPTER NO. 95

[SB 67]

AN ACT REQUIRING THE OFFICE OF COURT ADMINISTRATOR TO TRANSFER \$25,000 TO THE GENERAL FUND IN LIEU OF CONDUCTING AN EVALUATION OF SELECTED JUVENILE OUT-OF-HOME PLACEMENTS, PROGRAMS, AND SERVICES FOR FISCAL YEARS 2011 AND 2012; AMENDING SECTION 41-5-2003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 41-5-2003, MCA, is amended to read:

“41-5-2003. Establishment of program — department duties — office of court administrator duties. (1) There is a juvenile delinquency intervention program. Each judicial district shall participate in the program.

(2) The department and the judicial district shall monitor the judicial district’s annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

(3) The department shall provide technical assistance to each judicial district for the monitoring of its annual allocation.

(4) The office of court administrator shall assist each youth court in developing placement alternatives and community intervention and prevention programs and services.

(5) (a) ~~Each~~ *Except as provided in subsection (6), each* fiscal year, the office of court administrator shall select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide

recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

(b) The office shall report the results of any evaluation conducted under subsection (5)(a) each year to the department, cost containment review panel, district court council, and law and justice interim committee.

(6) *On or before June 30 in fiscal years 2011 and 2012, the office of court administrator shall transfer \$25,000 in each fiscal year from the youth court intervention and prevention account to the general fund in lieu of conducting the evaluation required by subsection (5) for fiscal years 2011 and 2012.*

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

Approved March 30, 2011

CHAPTER NO. 96

[SB 103]

AN ACT EXEMPTING FROM PERMITTING THE DEVELOPMENT OF GROUND WATER WELLS AND SPRINGS FOR USE IN CERTAIN HEATING OR COOLING APPLICATIONS; AND AMENDING SECTION 85-2-306, MCA.

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) (i) *Except as provided in subsection (3)(a)(ii), outside* ~~Outside~~ the boundaries of a controlled ground water area, a permit is not required before

appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(ii) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 350 gallons a minute or less for use in nonconsumptive geothermal heating or cooling exchange applications if all of the water extracted is returned without delay to the same source aquifer and if 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.

(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 refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.”

Approved March 30, 2011

CHAPTER NO. 97

[SB 128]

AN ACT EXEMPTING FROM PERMITTING GROUND WATER APPROPRIATIONS BY LOCAL GOVERNMENTAL FIRE AGENCIES FOR FIRE PROTECTION USE; AND AMENDING SECTION 85-2-306, MCA.

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) with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit; or

(ii) *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, which may include enclosed storage.*

(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 refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.”

Approved March 30, 2011

CHAPTER NO. 98

[SB 342]

AN ACT DEFINING “MISCONDUCT” WITH RESPECT TO UNEMPLOYMENT INSURANCE BENEFITS; AND AMENDING SECTION 39-51-201, MCA.

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

Section 1. Section 39-51-201, MCA, is amended to read:

“39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) “Annual payroll” means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) “Base period” means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

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

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a

single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

- (v) a chiropractor under Title 37, chapter 12;
- (vi) a clinical psychologist under Title 37, chapter 17; or
- (vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) (a) *“Misconduct” includes but is not limited to the following conduct by an employee:*

(i) *willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer;*

(ii) *deliberate violations or disregard of standards of behavior that the employer has the right to expect of an employee;*

(iii) *carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or a fellow employee; or*

(iv) *carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or substantial disregard of the employer’s interest.*

(b) *The term does not include:*

(i) *inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;*

(ii) *inadvertent or ordinary negligence in isolated instances; or*

(iii) *good faith errors in judgment or discretion.*

(19)(20) *“No-additional-cost service” has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.*

(20)(21) *“State” includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.*

(21)(22) *“Taxes” means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.*

(22)(23) *“Tribal unit” means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.*

(23)(24) *“Unemployment insurance administration fund” means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.*

(24)(25) (a) *“Wages”, unless specifically exempted under subsection (24)(b) (25)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:*

(i) *commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;*

(ii) *severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and*

(iii) *tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.*

(b) *The term does not include:*

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

~~(25)~~(26) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(26)~~(27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Approved March 30, 2011

CHAPTER NO. 99

[HB 70]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE PUBLIC RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; PERMITTING THE BOARD TO APPOINT ITS OWN ATTORNEY TO REVIEW PROPOSED BOARD RULES; CLARIFYING DEFINITIONS REGARDING TERMINATION OF SERVICE TO SPECIFY THAT A MEMBER WITH AN AGREEMENT TO RETURN TO WORK IS NOT ELIGIBLE TO RETIRE; CLARIFYING LIABILITY FOR INCORRECT REPORTING OR ERRONEOUS PAYMENTS; CLARIFYING THE EFFECT OF OLD MEMBERSHIP CARDS ON RETURNING MEMBERS; CLARIFYING THAT A SERVICE PURCHASE MUST STOP OR BE COMPLETED PRIOR TO PAYMENT OF A DISABILITY BENEFIT; CLARIFYING THAT GUARANTEED ANNUAL BENEFIT ADJUSTMENT PAYMENTS ARE NOT PAID RETROACTIVELY; ADDRESSING BANKED HOLIDAY PAYMENTS; TREATING THE MONTANA SCHOOL FOR THE DEAF AND BLIND AS A SCHOOL DISTRICT FOR CALCULATION OF MEMBERSHIP SERVICE DURING OFFICIAL VACATION; CLARIFYING THE TREATMENT OF ADDITIONAL OR ONE-FOR-FIVE SERVICE PURCHASES; PROVIDING THAT RETIRED MEMBERS MUST BE TERMINATED FROM EMPLOYMENT FOR AT LEAST 90 DAYS PRIOR TO RETURNING TO SERVICE AS A WORKING RETIREE; CLARIFYING THE DEATH BENEFIT AVAILABLE TO A BENEFICIARY OF A MEMBER WHO WAS INACTIVE FOR LESS THAN 6 MONTHS AT THE TIME OF DEATH; CLARIFYING PAYMENT OF THE REMAINING OPTION 4 BENEFIT WHEN THE RETIREE AND ALL NAMED CONTINGENT ANNUITANTS DIE PRIOR TO THE END OF THE PERIOD CERTAIN; REDUCING THE ASSUMED RATE OF INTEREST; CLARIFYING THE BENEFIT AVAILABLE

TO GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM MEMBERS; ELIMINATING THE AD HOC BENEFIT INCREASE USED FOR PURCHASING POWER ADJUSTMENTS; AMENDING SECTIONS 2-4-110, 2-15-1009, 17-6-203, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-706, 19-2-715, 19-2-801, 19-2-802, 19-2-908, 19-3-108, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-513, 19-3-901, 19-3-906, 19-3-1106, 19-3-1201, 19-3-1202, 19-3-1203, 19-3-1501, 19-3-2114, 19-3-2117, 19-5-701, 19-7-301, 19-7-302, 19-7-1001, 19-8-101, 19-8-601, 19-8-801, 19-8-1003, 19-13-301, AND 19-21-214, MCA; REPEALING SECTIONS 19-3-1606 AND 19-8-604, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-4-110, MCA, is amended to read:

"2-4-110. Departmental review of rule notices. (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the appropriate administrative rule review committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121 *unless otherwise excepted*, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the statement of reasonable necessity for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct;

(d) whether the intended action is contrary to the code section or sections implemented or to other law; and

(e) for a rule that initially implements legislation, whether the intended action is contrary to any comments submitted to the department by the primary sponsor of the legislation for the purposes of 2-4-302.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section."

Section 2. Section 2-15-1009, MCA, is amended to read:

"2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of seven members appointed by the governor with the consent of the senate. The members are:

(a) three public employees who are active members of a public retirement system. Not more than one of these members may be an employee of the same

department and at least one of these members must, no later than July 1, 2003, be a member of the defined contribution plan created pursuant to Title 19, chapter 3, part 21.

(b) one retired public employee who is a member of the public employees' retirement system;

(c) two members at large; and

(d) one member who has experience in investment management, counseling, or financial planning or who has other similar experience.

(3) The term of office for each member is 5 years.

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

(b) The board shall hire necessary employees as provided in 19-2-404.

(c) *Consistent with its constitutional mandate to administer the retirement plans as a fiduciary of system participants and their beneficiaries, the board shall appoint its own existing attorney in lieu of the person appointed by the department, as provided for in 2-4-110, to have sole responsibility for the legal review of each board rule proposal notice, adoption notice, or other notice related to administrative rulemaking.*

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124."

Section 3. Section 17-6-203, MCA, is amended to read:

"17-6-203. Separate investment funds. Separate investment funds must be maintained as follows:

(1) the permanent funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in Article X, sections 2 and 10, of the Montana constitution. The principal and any part of the principal of each fund constituting the Montana permanent fund type are subject to deposit at any time when due under the statutory provisions applicable to the fund and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system maintained by the state, including:

~~(a) the highway patrol officers' retirement system described in Title 19, chapter 6;~~

~~(b)~~(a) the public employees' retirement system described in Title 19, chapter 3;

(b) *the judges' retirement system described in Title 19, chapter 5;*

(c) *the highway patrol officers' retirement system described in Title 19, chapter 6;*

(d) *the sheriffs' retirement system described in Title 19, chapter 7;*

~~(e)~~(e) the game wardens' and peace officers' retirement system described in Title 19, chapter 8;

(f) *the municipal police officers' retirement system described in Title 19, chapter 9;*

(g) *the firefighters' unified retirement system described in Title 19, chapter 13;*

(h) *the Volunteer Firefighters' Compensation Act under Title 19, chapter 17;*

(d)(i) the teachers' retirement system described in Title 19, chapter 20; and
(e)(j) the workers' compensation program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) the fish and wildlife mitigation trust fund established by 87-1-611;

(5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution to be observed by the state of Montana. If a gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other gifts, donations, grants, legacies, bequests, devises, or contributions.

(6) a fund consisting of coal severance taxes allocated to the coal severance tax trust fund under Article IX, section 5, of the Montana constitution. The principal of the coal severance tax trust fund is permanent. If the legislature appropriates any part of the principal of the coal severance tax trust fund by a vote of three-fourths of the members of each house, the appropriation or investment may create a gain or loss in the principal.

(7) a Montana tobacco settlement trust fund established in accordance with Article XII, section 4, of the Montana constitution and Title 17, chapter 6, part 6; and

(8) additional investment funds that are expressly required by law or that the board of investments determines are necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Section 4. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "*Banked holiday time*" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

~~(9)~~(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

~~(10)~~(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

~~(11)~~(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

~~(12)~~(13) "Covered employment" means employment in a covered position.

~~(13)~~(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

~~(14)~~(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

~~(15)~~(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

~~(16)~~(17) "Department" means the department of administration.

~~(17)~~(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

~~(18)~~(19) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

~~(19)~~(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

~~(20)~~(21) "Distributee" means:

- (a) a member;
- (b) a member's surviving spouse;
- (c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or
- (d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

~~(21)~~(22) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

~~(22)~~(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

- (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);
- (b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);
- (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);
- (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);
- (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);
- (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or
- (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

~~(23)~~(24) "Eligible rollover distribution":

- (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;
- (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

~~(24)~~(25) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

~~(25)~~(26) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

~~(26)~~(27) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;

- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

~~(27)~~(28) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

~~(28)~~(29) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

~~(29)~~(30) "Internal Revenue Code" has the meaning provided in 15-30-2101.

~~(30)~~(31) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

~~(31)~~(32) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(32)~~(33) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

~~(33)~~(34) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

~~(34)~~(35) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

~~(35)~~(36) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

~~(36)~~(37) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

~~(37)~~(38) "Regular contributions" means contributions required from members under a retirement plan.

~~(38)~~(39) "Regular interest" means interest at rates set from time to time by the board.

~~(39)~~(40) "Retirement" or "retired" means the status of a member who has:

- (a) terminated from service; and
- (b) received and accepted a retirement benefit from a retirement plan.

~~(40)~~(41) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

~~(41)~~(42) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a

defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection ~~(9)(b)~~ (10)(b).

~~(42)~~(43) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

~~(43)~~(44) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(44)~~(45) "Service" means employment of an employee in a position covered by a retirement system.

~~(45)~~(46) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

~~(46)~~(47) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

~~(47)~~(48) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(48)~~(49) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(49)~~(50) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(50)~~(51) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

~~(51)~~(52) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) *no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;*

~~(b)~~(c) the member is no longer receiving compensation for covered employment; and

(e)(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection ~~(51)~~ (52), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

~~(52)~~(53) “Unfunded actuarial liabilities” or “unfunded liabilities” means the excess of a defined benefit retirement plan’s actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(53)~~(54) “Vested account” means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member’s beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

- (a) the member’s contribution account;
- (b) the vested portion of the employer’s contribution account; and
- (c) the member’s account for other contributions.

~~(54)~~(55) “Vested member” or “vested” means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

~~(55)~~(56) “Written application” or “written election” means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

~~(56)~~(57) “Written instrument” includes an electronic record containing an electronic signature, as defined in 30-18-102.”

Section 5. 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.

(5) 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.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) *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.

~~(8)~~(9) 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.

~~(9)~~(10) 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.

~~(10)~~(11) The board may implement third-party mailings under the provisions of 2-6-109. 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.

~~(11)~~(12) 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.

~~(12)~~(13) 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 ~~(11)~~ (12) or the contested case procedure of the Montana Administrative Procedure Act.

~~(13)~~(14) 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 6. Section 19-2-506, MCA, is amended to read:

"19-2-506. Payment of contributions by employers — accompanying reports — penalty — liability. (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or \$10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or
(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) (a) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer.

(b) The rules must specify the employee categories to be reported, the data required, the method of reporting, the reporting period, and the frequency of reports needed to meet the demands of the relevant retirement system or plan.

(c) The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) *The board is not responsible or liable for any incorrect reporting or erroneous payment of contributions by an employer.*

~~(5)~~(6) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials.”

Section 7. Section 19-2-603, MCA, is amended to read:

“19-2-603. Reinstatement after withdrawal of contributions. (1)

Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes a 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 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. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated.

~~(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in 19-2-801.”~~

Section 8. Section 19-2-706, MCA, is amended to read:

“19-2-706. Additional service credit for active member involuntarily terminated from employment. (1) The provisions of subsection (3) apply to an employee of the state or university system if:

(a) the employee is an active member of the public employees’, *defined benefit plan or the* game wardens’ and peace officers’, sheriffs’, firefighters’ unified, or highway patrol officers’ retirement system;

(b) the employee has involuntarily terminated from employment because of elimination of the employee’s position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a member who is a legislator,

the legislator is terminated from office in either one of the houses of the legislature because of term limits;

(c) the employee is eligible for service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives the rights and benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service credit purchased under this section is the total actuarial cost of purchasing the service credit based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, 19-8-904, or 19-13-405. The employer-paid portion must be calculated using the formula $A \times B \times C$ when:

(a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service credit purchased.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to be purchased and the contribution required from the employer under subsection (3). The member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service credit under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in any retirement system forfeits the additional service credit. The employer's contribution to purchase that member's additional service credit, minus any retirement benefits already paid, must be credited to the employer.

(b) As used in subsection (6)(a), the term "same jurisdiction" means all agencies of the state, including the university system."

Section 9. Section 19-2-715, MCA, is amended to read:

"19-2-715. Purchase of Montana public service. (1) (a) An active member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system if the member has:

(i) received or is eligible to receive a refund of accumulated contributions; ~~or~~
and

(ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(d) If the member was formerly in the public employees' retirement system's defined contribution plan, the member shall pay the actuarial cost of the service credit in the member's current retirement system based on the system's most recent actuarial valuation and the annual compensation of the member. The member is eligible to transfer the vested portion of the member's defined contribution account to pay the balance due. Any nonvested portion of the defined contribution account is forfeited pursuant to 19-3-2117.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of previous employment for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation. For the purpose of this subsection (2)(a), a political subdivision of the state includes a school district.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes public service, subject to 19-2-403."

Section 10. Section 19-2-801, MCA, is amended to read:

"19-2-801. Designation of beneficiary. (1) ~~(a)~~ In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board.

(2) Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board.

(3) *If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the board shall reference the membership card executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries nominated on that membership card continue until changed as provided in subsection (2) of this section.*

(4) (a) Except as provided in ~~subsection (1)(b)~~ subsections (4)(b) and (4)(c), the beneficiary designation on the most recent beneficiary designation membership card filed with the board is effective for all purposes until the member retires.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership card for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) *When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.*

(2)(5) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(3)(6) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

(7) *A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501, 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of the member.*

Section 11. Section 19-2-802, MCA, is amended to read:

"19-2-802. Effect of no designation of beneficiary or no surviving statutory or designated beneficiary. (1) *If a member or payment recipient fails to name a designated beneficiary or if a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate, as either a designated beneficiary or as a beneficiary by default as provided in this subsection, would not be probated but for the amount due to the estate from the retirement system, all of the amount due to the estate must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.*

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 12. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all

eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of employment or, if requested by the member in writing, on the first day of a later month.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) ~~The~~ *If a disabled member continues with a purchase of service or chooses to purchase service following termination of employment, the member's disability benefit may not commence until the service purchase is completed.*

(4) *If a member begins receiving retirement benefits payments later than when the member is initially eligible, the guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid retroactively. The guaranteed annual benefit adjustment begins on does not commence until January 1 of the year after the year in which the member has received an amount equal to or greater than 12 months of disability begins to receive the member's retirement benefit payments payment. The guaranteed annual benefit adjustment may not be paid retroactively.*

(4)(5) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5)(6) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6)(7) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 13. 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, *banked holiday time*, 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) the contributions made pursuant to 19-3-403(4)(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; and

(v) lump-sum payments for compensatory leave, sick leave, *banked holiday time*, or annual leave paid without termination of employment.

(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 a member's highest average monthly compensation during any 36 consecutive months of membership service, except as otherwise provided in subsection (6)(b) or (6)(c).

(b) For a member who has attained 65 years of age but has not served at least 36 months, highest average compensation means total compensation earned divided by the number of months the member has served.

(c) For a vested member who does not have 36 consecutive months of membership service, highest average compensation means the highest total compensation earned during any 36 consecutive calendar months divided by 36.

(d) Lump-sum payments for severance pay, including payment 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.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 14. Section 19-3-319, MCA, is amended to read:

"19-3-319. State contributions for local government and school district employers. (1) The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation paid to all employees of local government entities and school districts on and after July 1, 1997, except those employees properly excluded from membership.

(2) (a) Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state shall contribute monthly from the general fund to the pension trust fund a sum equal to ~~the following percentage~~ 0.27% of the compensation paid to all employees of school districts ~~on and after July 1, 2007~~, except for those employees properly excluded from membership:

- (i) ~~beginning July 1, 2007, 0.135%; and~~
- (ii) ~~beginning July 1, 2009, 0.27%.~~

(b) The additional contribution under subsection (2)(a) terminates when the additional contribution under 19-3-316(3) terminates.

(3) The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are statutorily appropriated as provided in 17-7-502.”

Section 15. Section 19-3-401, MCA, is amended to read:

“19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees ~~must~~ become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting ~~their~~ *the employer’s* employees’ status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member’s accumulated contributions and not the employer’s contributions.

(3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member’s accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

- (a) returns to service within 30 days of termination of employment; or
- (b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district, *the Montana school for the deaf and blind*, or a public institution of higher education is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits.”

Section 16. Section 19-3-403, MCA, is amended to read:

“19-3-403. Exclusions from membership. The following persons may not become members of the retirement system and, except as provided in subsection (7), may not later purchase previous service under 19-3-505:

- (1) inmates *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) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

(6) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(7) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505."

Section 17. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) Except as provided in 5-2-304 and subsection (2) of this section, the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 10 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) A member who is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 90 days of ~~being elected~~ *taking office*, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board:

(i) for an employee described in subsection (1)(d), within 90 days of the commencement of the employee's employment; and

(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 90 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection (2), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee who declines membership for a position for which membership is optional may not later become a member while still employed with the same employer but in a different optional membership position.

(b) An elected official who declines membership for a position for which membership is optional may not later become a member if reelected to the same optional membership position.

(c) If, after ~~a break in service~~ *of termination from employment* for 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(d) If the ~~break in service~~ *termination from employment* is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership must become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 18. Section 19-3-513, MCA, is amended to read:

"19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement *or to bring a member to 25 years of membership service for the purposes of 19-3-902 or 19-3-904(2).*

(4) ~~Once a member has at least 25 years of membership service, purchases~~ *Purchases* of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906 *if applicable.*"

Section 19. Section 19-3-901, MCA, is amended to read:

"19-3-901. Eligibility for service retirement. (1) A member who has attained ~~the age of~~ *60 years of age* and has 5 years of membership service is eligible for service retirement. A member who has attained *at least age 65 years of age and is while* employed in a position covered by a public employees' retirement system is eligible for service retirement regardless of the member's years of membership service. A member who has 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) In each of the circumstances described in subsection (1), the member has attained normal retirement age."

Section 20. Section 19-3-906, MCA, is amended to read:

"19-3-906. Early retirement benefit. (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by ~~1/2 of 1%~~ *0.5%* multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by ~~3/10 of 1%~~ *0.3%* multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513 ~~once the member has at least 25 years of membership service.~~

Section 21. Section 19-3-1106, MCA, is amended to read:

“19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exceptions. (1) A retired member under 65 years of age who *has been terminated from employment for at least 90 days and* is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree’s retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A ~~retiree~~ *retired member who is 65 years of age or older but less than 70 1/2 years of age, who has been terminated from employment for at least 90 days, and* who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree’s current annual retirement ~~benefits~~ *benefit*, will not exceed the member’s annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree’s benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who, *as a retired member*, declines optional membership as provided in 19-3-412.

(6) For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102."

Section 22. Section 19-3-1201, MCA, is amended to read:

"19-3-1201. Eligibility for death payments. Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death payment to the designated beneficiary of any member who dies:

(1) while in service;

~~(2) within 6 months after the discontinuance of service but before retirement;~~

~~(3)~~(2) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months;

~~(4)~~(3) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit; or

~~(5)~~(4) while an inactive member."

Section 23. Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of death payment. (1) The amount of death payment to be made to the designated beneficiary of a deceased member is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

(a) the member's accumulated contributions;

(b) subject to subsection (2), an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

(c) the accumulated regular interest on the amounts in subsections (1)(a) and (1)(b) to the first day of the month in which the payment is made.

(2) (a) *A beneficiary of a member who was inactive for less than 6 months at the time of death is eligible to receive the payment described in subsection (1)(b).*

(b) *A beneficiary of an inactive a member who was inactive for 6 or more months at the time of death is not eligible to receive the payment described in subsection (1)(b).*"

Section 24. Section 19-3-1203, MCA, is amended to read:

"19-3-1203. Election of optional death annuity. The designated beneficiary of a deceased member may elect, by filing a written application with the board, to have the death payment provided for in ~~19-3-1201~~ 19-3-1202 paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits."

Section 25. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 26. Section 19-3-2114, MCA, is amended to read:

"19-3-2114. Amount available to transfer. (1) (a) For an employee who was an active member of the system on the day before the effective date of the defined contribution plan and who elects to transfer to the plan:

(i) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(ii) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the contributions were received.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of membership service, the percentage of the employer contributions that may be transferred are as follows:

Years of membership service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus:

(a) 8% compounded annual interest from the *initial* month that the contributions were received *through the last month that the contributions were received prior to July 1, 2011; and*

(b) *7.75% compounded annual interest from July 1, 2011, forward.*

(3) For an employee who was an inactive member of the defined benefit plan on the date that the defined contribution plan became effective and who after that date became an active member and elected to transfer to the defined contribution plan:

(a) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(b) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus:

(i) 8% compounded annual interest from the *initial* month that the contributions were received *through the last month that the contributions were received prior to July 1, 2011; and*

(ii) *7.75% compounded annual interest from July 1, 2011, forward."*

Section 27. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141; and

(b) ~~on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:~~

(i) to the administrative account used by the board to meet the expenses of the plan's startup loan; until paid in full;

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

(iii) to the long-term disability plan trust fund to provide disability benefits to eligible members.

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 28. Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) *if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an*

equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 29. Section 19-7-301, MCA, is amended to read:

"19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator shall become a member of the sheriffs' retirement system.

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(3) (a) Except as provided in subsection (3)(b), a detention officer shall become a member of the sheriffs' retirement system.

(b) A detention officer who was a member of the public employees' retirement system on July 1, 2005, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board before May 1, 2006.

(4) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(5) A sheriff, ~~or~~ investigator, *or detention officer* who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

(6) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(7) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 30. Section 19-7-302, MCA, is amended to read:

"19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, a sheriff may not become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs.

(2) After July 1, 1993, an investigator is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to investigators, except as provided in 19-7-301.

(3) After July 1, 2005, a detention officer is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to detention officers, except as provided in 19-7-301.

(4) This chapter may not be construed to deny any sheriff, ~~or~~ investigator, *or detention officer* any benefits accrued under provisions of the public employees' retirement system prior to membership in this retirement system."

Section 31. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the

actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant, as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have

the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 32. Section 19-8-101, MCA, is amended to read:

"19-8-101. 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 in payment 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, *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 maintenance, allowances, and expenses.

(2) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, and *banked holiday time*, 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.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) “Motor carrier officer” means an employee of the department of transportation designated or appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

(5) “Peace officer” or “state peace officer” means a person who by virtue of the person’s employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person’s authority or who is charged with specific law enforcement responsibilities on behalf of the state.”

Section 33. Section 19-8-601, MCA, is amended to read:

“19-8-601. Time of retirement. (1) A member who has completed at least 20 years of membership service and reached ~~the age of~~ 50 years of age has attained normal retirement age and may retire with a service retirement benefit by filing a written application with the board.

(2) *A vested member who terminated service before completing 20 years of membership service may begin receiving a service retirement benefit upon reaching 55 years of age and filing a written application with the board.*”

Section 34. Section 19-8-801, MCA, is amended to read:

“19-8-801. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member’s or designated beneficiary’s lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member’s or designated beneficiary’s spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member’s or beneficiary’s birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee’s death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 35. Section 19-8-1003, MCA, is amended to read:

“19-8-1003. Nonduty-related death of active member. If a member dies before reaching *normal* retirement age, the member’s designated beneficiary may choose either a lump-sum refund of the member’s accumulated contributions or the actuarial equivalent of the *early service* retirement benefit as provided for in ~~19-8-604~~ *19-8-601*.”

Section 36. Section 19-13-301, MCA, is amended to read:

“19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) ~~Except as provided in subsection (7),~~ a full-paid firefighter becomes an active member of the retirement system:

- (a) on the first day of the firefighter’s service with an employer;
- (b) on July 1, 1981, if the firefighter is employed by an employer on that date;

or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing an irrevocable written election with the board within 90 days of becoming a part-paid firefighter.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

- (a) the date on which the member ceases service with an employer;
- (b) the 31st day of an approved absence from active duty with an employer;

or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member’s accumulated contributions and not the employer’s contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member’s accumulated contributions.

~~(7) (a) A firefighter previously employed in a position covered under the public employees’ retirement system and who is first hired into a position covered under the firefighters’ unified retirement system after attaining 45 years of age may elect to remain in the public employees’ retirement system.~~

~~(b) A firefighter making an irrevocable election to remain in the public employees’ retirement system shall make the election in a manner prescribed by the board within 90 days of being hired into the position otherwise covered under the firefighters’ unified retirement system.~~

~~(8) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system~~

for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit."

Section 37. Reemployment of retired member. A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit.

Section 38. Section 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), of the employer's contribution:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(iii) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); and

(b) ~~on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:~~

(i) to the administrative account used by the public employees' retirement board to meet the expenses of the defined contribution plan's startup loan, until paid in full; and

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121."

Section 39. Repealer. The following sections of the Montana Code Annotated are repealed:

19-3-1606. Purchasing power adjustment.

19-8-604. Early retirement benefit.

Section 40. Codification instruction. [Section 37] is intended to be codified as an integral part of Title 19, chapter 13, and the provisions of Title 19, chapter 13, apply to [section 37].

Section 41. Effective date. [This act] is effective July 1, 2011.

Approved April 1, 2011

CHAPTER NO. 100

[HB 94]

AN ACT GENERALLY REVISING PROFESSIONS AND OCCUPATIONS LAW; REVISING LICENSE VERIFICATION REQUIREMENTS FOR OUT-OF-STATE APPLICANTS; PROVIDING THAT A SCREENING PANEL IS AN AGENCY FOR THE PURPOSE OF SUMMARY SUSPENSIONS; REVISING DEFINITIONS AND THE ADMINISTRATION OF ANESTHESIA PERTAINING TO DENTISTRY; ELIMINATING THE REFERENCE TO A STATE EXAMINATION WITH RESPECT TO PODIATRISTS; REVISING BARBER AND COSMETOLOGIST LAW REGARDING BOOTH RENTAL, INSTRUCTOR TRAINING, AND LICENSING; EXPANDING THE AUTHORITY OF THE BOARD OF OUTFITTERS TO APPROVE LICENSE SUCCESSORS; REVISING DUTIES OF THE BOARD OF OUTFITTERS AND ELIMINATING RESTRICTIONS ON THE BOARD'S HIRING OF INVESTIGATORS; REVISING REALTY LAWS PERTAINING TO EDUCATION AND LICENSING REQUIREMENTS; REVISING PRIVATE SECURITY LAW DEFINITIONS AND RULEMAKING; AMENDING PROFESSIONAL ENGINEERING AND LAND SURVEYOR LAWS WITH RESPECT TO OUT-OF-STATE APPLICANTS; EXPANDING RECIPROCITY WITH RESPECT TO CRANE OPERATORS; REPEALING THE REQUIREMENT THAT PHARMACIES POST CERTAIN PRESCRIPTION DRUG PRICES; AMENDING SECTIONS 37-1-304, 37-1-305, 37-1-307, 37-3-310, 37-4-101, 37-4-511, 37-6-302, 37-31-305, 37-31-309, 37-31-312, 37-47-202, 37-47-310, 37-47-351, 37-51-204, 37-51-308, 37-51-605, 37-60-101, 37-60-202, 37-60-303, 37-67-306, 37-67-312, 37-67-313, AND 50-76-113, MCA; AND REPEALING SECTION 37-7-204, MCA.

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

Section 1. Section 37-1-304, MCA, is amended to read:

“37-1-304. Licensure of out-of-state applicants — reciprocity. (1) A board may 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 ~~not~~ be issued ~~until the board receives~~ *if the applicant affirms or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.*

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.”

Section 2. Section 37-1-305, MCA, is amended to read:

“37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued ~~until the board receives in the board’s discretion if the applicant verifies or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.~~ *If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.*

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.”

Section 3. Section 37-1-307, MCA, is amended to read:

“37-1-307. Board authority. (1) A board may:

- (a) hold hearings as provided in this part;
- (b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.
- (c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;
- (d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. *A screening panel is an agency for purposes of summary suspensions under 2-4-631.* A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel’s finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.
- (e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board’s licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without

complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 4. Section 37-3-310, MCA, is amended to read:

“37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in the application the person's correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting the person. A person licensed to practice medicine in this state shall keep the department advised at all times of the person's correct mailing address and of the person's correct name. If the person changes the person's address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department *electronically or* in writing of the old and new address or of the former name and new name. This information must be entered promptly by the department in the official records of the department.”

Section 5. Section 37-4-101, MCA, is amended to read:

“37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) “Board” means the board of dentistry provided for in 2-15-1732.

(b) ~~“Conscious sedation” means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of~~

~~unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.~~

(b) *“Deep sedation” means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.*

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

(d) ~~“General anesthesia” means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:~~

~~(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and~~

~~(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure. drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.~~

~~(e) (i) “General anesthetic” means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia.~~

~~(ii) The term does not include a nitrous oxide and oxygen mixture or any other anesthetic administered to produce conscious sedation.~~

(2) Except for the provisions of 37-4-104, a person is practicing dentistry under this chapter if the person:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to the person, any other person, or any agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in 37-4-104;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S." or "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that the person can perform or will attempt to perform dental operations or render a diagnosis in connection with dental operations; or

(l) engages in any of the practices included in the curricula of recognized dental colleges."

Section 6. Section 37-4-511, MCA, is amended to read:

~~"37-4-511. Limitations on administration of general anesthetics and practices involving regarding deep sedation or general anesthesia.~~ (1) ~~A person engaged in the practice of dentistry or oral surgery may not perform any dental or surgical procedure upon another person if a general anesthetic is administered unless the anesthetic is administered and monitored by:~~

~~(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;~~

~~(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or~~

~~(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.~~

~~(2) A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).~~

~~(3)(1) A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under ~~light~~ *deep sedation* or general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and who has demonstrated a satisfactory level of proficiency as established by the board *trained health care professional*.~~

~~(4) A person engaged in the practice of dentistry or oral surgery may not administer a general anesthetic to any other person unless the administering person satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications of general~~

anesthesia. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).

(5)(2) The facility in which *deep sedation* or general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under *deep sedation* or general anesthesia, and to treat the complications that may arise from *deep sedation* or general anesthesia.”

Section 7. Section 37-6-302, MCA, is amended to read:

“37-6-302. Qualifications for licensure. (1) A person who wishes to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry.

(2) A person may not be granted a license to practice podiatry in this state unless the person:

- (a) is of good moral character as determined by the board;
- (b) is a graduate of a school of podiatry approved by the board;
- (c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board;
- (d) has made a personal appearance before the board; *and*
- (e) has passed an examination administered by the national board of podiatry examiners and is a diplomate of the national board of podiatry examiners; ~~and~~
- (f) ~~has obtained a score of at least 75% on an examination administered by the board.~~

(3) The board may waive the requirements described in subsections ~~subsection (2)(d) and (2)(f).~~”

Section 8. Section 37-31-305, MCA, is amended to read:

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

(2) To be eligible to take an examination to obtain a license to teach cosmetology for a license to teach barbering, cosmetology, electrology, esthetics, or manicuring, a person must:

- (a)(a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction; ~~and;~~
- (b) ~~(i)~~(b) have a license to practice cosmetology issued by the department in the particular area of practice in which the person plans to teach ~~and have received a diploma from a licensed school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or~~
- (ii)(c) have been actively engaged as a cosmetologist in that particular area of practice for ~~≥ 12 continuous years immediately~~ months before taking the teacher’s examination; *and*

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

~~(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.~~

~~(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:~~

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

~~(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or~~

~~(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.~~

~~(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.~~

~~(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:~~

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

~~(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or~~

~~(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.~~

~~(7) To be eligible to take an examination to obtain a license to teach barbering, a person must:~~

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

~~(b) (i) have a license to practice barbering issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 500 hours of student teacher training; or~~

~~(ii) have been actively engaged as a barber for 3 continuous years immediately before taking the teacher's examination.~~

~~(8) To be eligible to take an examination for a license to teach electrology, a person must:~~

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

~~(b) have a 100-hour teacher certificate; and~~

~~(c) have been actively engaged as an electrologist for 3 continuous years immediately preceding taking the teacher's examination."~~

Section 9. Section 37-31-309, MCA, is amended to read:

"37-31-309. Booth rental license. (1) A No person may *not* receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

(2) A booth rental license that is not renewed within 1 year of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained. The provisions of 37-1-141 do not apply to this subsection.

Section 10. Section 37-31-312, MCA, is amended to read:

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

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

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

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

(3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to operate ~~for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever comes first~~ until an inspection is conducted of the salon or shop and the salon or shop owner or manager has had 30 days to respond in writing to all inspection report violations to the board office. A license will not be granted to a salon or shop if the board does not receive a response within 30 days from the date of the inspection or the response received does not indicate that all of the inspection violations have been corrected, in which case a new license application must be filed. A temporary permit is not renewable.

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

Section 11. Section 37-47-202, MCA, is amended to read:

“37-47-202. Executive director — ~~powers and duties.~~ (1) The department may hire an executive director to assist the board in carrying out its duties under this chapter.

~~(2) The duties of the executive director include:~~

~~(a) processing and investigating applications for licensure as an outfitter or guide;~~

~~(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;~~

~~(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and~~

~~(d) coordinating investigations with other local, state, and federal agencies.”~~

Section 12. Section 37-47-310, MCA, is amended to read:

“37-47-310. Transfer or amendment of outfitter’s license — transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter’s license may not be transferred.

(2) An individual person may, upon proper showing, have that person’s outfitter’s license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter’s unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business *an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter’s status as an active member of the military may continue to provide outfitting services for the outfitter’s unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.*

(4) When a fishing outfitter’s business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter’s historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter’s business. Upon the sale or transfer of a fishing outfitter’s business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that a property right does not attach to the transferred river-use days.”

Section 13. Section 37-47-351, MCA, is amended to read:

“37-47-351. Investigators — qualifications. (1) The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

(2) ~~To qualify as an investigator, a person must:~~

(a) ~~be a citizen of the United States and be a Montana resident;~~

(b) ~~have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide, or professional guide or as a regulator of the outfitting profession; and~~

(c) ~~have not less than 2 years’ experience as a licensed private investigator or as an investigator, detective, special agent, or peace officer of a city, county, or state or of a federal agency.”~~

Section 14. Section 37-51-204, MCA, is amended to read:

“37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

(4) *Education information obtained electronically by the board or stored in the board’s databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-131.”*

Section 15. Section 37-51-308, MCA, is amended to read:

“37-51-308. Broker’s office — notice to department of change of address. (1) A ~~resident~~ licensed broker shall maintain a ~~fixed office in this state.~~ The *designated physical address where the original license of the broker and the original license of each salesperson associated or under contract with the broker shall* ~~must be prominently displayed in the office.~~ The *designated* address of the office ~~and any branch office shall~~ *broker must be designated indicated* on the broker’s license.

(2) In case of removal from the designated address, the ~~licensee~~ *broker* shall notify the department before removal or within 10 days ~~thereafter~~ *after removal*, designating the new ~~location of this office~~ *physical address* and paying the required fee, whereupon a license for the new location must be issued for the unexpired period.”

Section 16. Section 37-51-605, MCA, is amended to read:

“37-51-605. Property manager’s office — notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. ~~The office manager must be designated on the license.~~ If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.”

Section 17. Section 37-60-101, MCA, is amended to read:

“37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) “Alarm response runner” means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) “Armed” means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

(3) “Armed carrier service” means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(4) “Armed private investigator” means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual’s duties.

(5) “Armed private security guard” means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual’s duties.

(6) “Armored car service” means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(7) “Board” means the board of private security provided for in 2-15-1781.

(8) “Branch office” means any office of a licensee within the state, other than its principal place of business within the state.

(9) “Contract security company” means any person who undertakes to provide a private security guard, alarm response runner, armored car service,

street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (a) "Electronic security company" means a person who *sells*, installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

(12) "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) "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) "Private investigator" means a person other than an insurance adjuster who for any consideration makes or agrees to make any investigation with reference to:

(a) crimes against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) gathering evidence to be used before any court, board, officer, or investigating committee.

(19) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or

trespass on private property or the direction of the movements of the public in public areas.

(20) "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 ~~branch~~ office located in this state where the business of the licensee is conducted.

(23) (a) "Security alarm installer" means an individual who *sells*, installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

(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 18. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing 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;

(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) for the approval of weapons;

~~(7) requiring the maintenance of records;~~

~~(8)~~(7) requiring licensees, except process servers, to file an insurance policy with the board; and

~~(9)~~(8) providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the requirements for age, employment experience, or written examination.”

Section 19. Section 37-60-303, MCA, is amended to read:

“37-60-303. License or registration qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence ~~under oath~~ that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or a legal, permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the requirements of a training program certified by the board and provide, on a form prescribed by the ~~board~~ *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~~ *under oath* that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant for a license as a private security patrol officer or private investigator who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board or, if doing business as a process server, must be registered by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board."

Section 20. Section 37-67-306, MCA, is amended to read:

"37-67-306. Qualifications of applicant for licensure as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects under the direct supervision of a professional engineer, unless exempt under 37-67-320(2), and ~~who has passed examinations of a grade and character that~~ *whose qualifications* indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more, with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 of those years the applicant has been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the principles and practices of

engineering. Upon passing the examination, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a license to practice engineering in this state if the applicant is otherwise qualified.”

Section 21. Section 37-67-312, MCA, is amended to read:

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

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

(3) *A person holding a license to engage in the practice of engineering in another state, territory, or possession of the United States, the District of Columbia, or any foreign country may be issued a license in this state if the person applies in the manner required by the board, meets the qualifications provided in 37-67-306, and has taken and passed the examinations provided for in 37-67-306 and 37-67-311. The experience requirements of 37-67-306 may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice engineering.*”

Section 22. Section 37-67-313, MCA, is amended to read:

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

(2) *A person holding a license to engage in the practice of land surveying in another state, territory, or possession of the United States, the District of Columbia, or any foreign country may be issued a license in this state if the person applies in the manner required by the board, meets the qualifications provided in 37-67-309, has taken and passed the examinations provided for in 37-67-309 and 37-67-311, and has taken and passed a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state. The experience requirements of 37-67-309 may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice land surveying.*

Section 23. Section 50-76-113, MCA, is amended to read:

“50-76-113. Recognition of national certification. (1) The department shall issue a first-class or second-class crane and hoist engineer’s license to any individual who is certified by the national commission for the certification of crane operators or any other similar certifying organization that has been approved by the department as having qualifications that are at least substantially equivalent to the requirements of this state for licensing as a first-class or second-class crane and hoist engineer.

(2) An individual licensed under this section is subject to all requirements of this chapter pertaining to licensed first-class or second-class crane and hoist engineers, including license fees, biennial physical exams, and 5-year reexaminations.”

Section 24. Repealer. The following section of the Montana Code Annotated is repealed:

37-7-204. Posting of prescription drug prices — adoption of list by rule.

Approved April 1, 2011

CHAPTER NO. 101

[HB 99]

AN ACT GENERALLY REVISING LAWS RELATING TO ABSENTEE BALLOTS AND MAIL BALLOTS; CLARIFYING PROCEDURES FOR AN ELECTOR TO VOTE ABSENTEE; CLARIFYING PROVISIONS RELATED TO REPLACEMENT BALLOTS; CLARIFYING PROCEDURES FOR RESOLVING PROBLEMS WITH RETURN ENVELOPE SIGNATURES; PROVIDING AN ELECTOR WITH NOTICE AND OPPORTUNITY TO RESOLVE QUESTIONS ABOUT OR PROBLEMS WITH THE ELECTOR'S SIGNATURE ON A RETURN ENVELOPE; CLARIFYING STATUTES RELATED TO VALID AND INVALID BALLOTS; REVISING BALLOT COUNTING PROCEDURES; AMENDING SECTIONS 13-13-201, 13-13-204, 13-13-212, 13-13-213, 13-13-222, 13-13-241, 13-15-201, 13-19-102, 13-19-106, 13-19-205, 13-19-206, 13-19-207, 13-19-301, 13-19-303, 13-19-305, 13-19-306, 13-19-308, 13-19-309, 13-19-312, AND 13-19-313, MCA; REPEALING SECTIONS 13-19-310 AND 13-19-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 13-13-201, MCA, is amended to read:

“13-13-201. Voting by absentee ballot — procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

- (2) The elector may vote absentee by:
- (a) marking the ballot in the manner specified;
 - (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
 - (c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;
 - (d) executing the affidavit printed on the return envelope; and
 - (e) returning the return envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to:
 - (i) the election ~~administrator~~ office;
 - (ii) a polling place within the elector's county;
 - (iii) ~~or~~, pursuant to 13-13-229, ~~to~~ the special absentee election board; or
 - (iv) in a mail ballot election held pursuant to Title 13, chapter 19, a designated place of deposit within the elector's county.

(3) *Except as provided in 13-21-206 and 13-21-207, in order for the ballot to be counted, each elector shall return it in a manner that ensures the ballot is received prior to 8 p.m. on election day.*

~~(3)~~(4) A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address."

Section 2. Section 13-13-204, MCA, is amended to read:

"13-13-204. Authority to vote in person — printing error or ballot destroyed — ~~failure to receive ballot~~ replacement ballot — effect of absentee elector's death. (1) (a) If an elector has received but not voted an absentee ballot and the absentee ballot contains printing errors or omissions, the elector may receive a replacement or corrected ballot ~~and vote in person at the election administrator's office.~~

(b) The death of a candidate after the printing of the ballot constitutes a printing error or omission on the ballot.

(2) ~~If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107 (a) An elector may request a replacement ballot from the election administrator pursuant to subsection (1) or if the original ballot is destroyed, spoiled, lost, or not received by the elector.~~

(b) *An elector whose original ballot is destroyed, spoiled, lost, or not received by the elector may appear at the appropriate polling place on election day and vote in person after being issued a provisional ballot.*

(3) *A request for a replacement ballot must be made on a form prescribed by the secretary of state and submitted to the election administrator in person, by regular or electronic mail, or by facsimile no later than 8 p.m. on election day.*

(4) Upon receiving a request for a replacement ballot pursuant to subsection (3), the election administrator shall mark the original issued ballot as void in the statewide voter registration database and issue a replacement regular ballot to the elector.

(5) A replacement ballot may also be issued pursuant to [section 7].

~~(3)~~(6) If an elector votes by absentee ballot and the ballot has been mailed or otherwise returned to the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted."

Section 3. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions.

(1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail a forwardable address confirmation form in January of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election.

(5) *In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in subsection (4).*”

Section 4. Section 13-13-213, MCA, is amended to read:

“13-13-213. Transmission of application to election administrator — delivery of ballot. (1) All absentee ballot application forms must be addressed to the appropriate election official.

(2) Except as provided in subsection ~~(5)~~ (4), the elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector’s application and forward it to the election administrator.

(3) (a) The election administrator shall compare the signature on the application with the applicant’s signature on the registration card or the agent’s signature on the agent designation form. If convinced that the individual making the application is the same as the one whose name appears on the registration card or the agent designation form, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214, subject to 13-13-205.

(b) ~~If no signature is provided or the election administrator is not convinced that the individual signing the application is the same person whose name appears on the registration card or agent designation form, the election administrator shall notify the elector or agent, either by mail or by the most expedient method available under rules adopted by the secretary of state, and inform the elector or agent that the elector or agent may verify the signature, after proof of identification, by mail or in person at the election administrator’s office prior to 8 p.m. on election day.~~

~~(4) If an election administrator cannot verify the signature, a ballot may not be provided to the elector as provided in [section 7].~~

~~(5)(4) In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card or agent designation form to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card or agent designation form, the special absentee election board shall provide a ballot to the elector when the ballot is available pursuant to 13-13-205.”~~

Section 5. Section 13-13-222, MCA, is amended to read:

“13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) If the ballot is marked before the election administrator, the election administrator shall deal with it as provided in 13-13-231.

(4) ~~The ballot is considered voted at the time it~~ *For the purposes of this section, an official ballot is voted when the ballot is received by the election administrator.*"

Section 6. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) ~~After an absentee ballot is received~~ *Upon receipt of each absentee ballot return envelope,* an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request with the signature on the ~~absentee ballot~~ return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector ~~by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot as provided in [section 7].~~

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form ~~or if there is no signature on the absentee ballot return envelope,~~ the election administrator shall notify the elector, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.

~~(6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.~~

~~(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107 as provided in [section 7].~~

~~(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in [section 7].~~

~~(8)(7) After receiving an If the validity of a particular ballot is confirmed pursuant to this section and [section 7], the election administrator shall remove the absentee ballot secrecy envelope, and without opening the secrecy envelope, the election judges officials shall on election day place the secrecy envelope in the proper ballot box."~~

Section 7. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's absentee ballot application or return envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator has not received or is unable to verify the elector's or agent's signature under 13-13-213 or 13-13-241.

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

(a) by mail, facsimile, electronic means, or in person, verify the elector's or agent's signature or provide a signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form; or

(b) if necessary, request and receive a replacement ballot pursuant to 13-13-204.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) (a) If a ballot is returned as undeliverable, the election administrator shall investigate the reason for the return.

(b) An elector must be provided with:

(i) the elector's undeliverable ballot upon notification by the elector of the elector's correct mailing address; or

(ii) a replacement ballot if a request has been made pursuant to 13-13-204.

Section 8. Section 13-15-201, MCA, is amended to read:

"13-15-201. Preparation for count — absentee ballot count procedures. (1) Subject to 13-10-311, to prepare for a manual or automatic count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

~~(2) An absentee ballot must be rejected and handled as provided in 13-15-108 if the envelope contains more than one voted ballot for each election.~~

~~(3)(2)~~ (2) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

~~(4)(3)~~ (3) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

~~(5)(4)~~ (4) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(6)(5) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

(6) *Only valid absentee ballots may be counted in an election conducted under this chapter.*

(7) *For the purpose of this chapter, a voted absentee ballot is valid only if:*

(a) *the elector's signature on the affirmation on the return envelope is verified pursuant to 13-13-241; and*

(b) *it is received before 8 p.m. on election day, except as provided in 13-21-206 and 13-21-207.*

(8) (a) *A ballot is invalid if:*

(i) *problems with the ballot have not been resolved pursuant to [section 7];*

(ii) *any identifying marks are placed on the ballot by the elector; or*

(iii) *except as provided in subsection (8)(b), more than one ballot is enclosed in a single return or secrecy envelope.*

(b) *The provisions of subsection (8)(a)(iii) do not apply if:*

(i) *there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or*

(ii) *the return envelope contains ballots from the same household, each ballot is in its own secrecy envelope, and the return envelope contains a valid signature for each elector who has returned a ballot."*

Section 9. Section 13-19-102, MCA, is amended to read:

"13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.

(2) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

~~(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:~~

~~(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and~~

~~(b) allow it to be used in the United States mail.~~

(5)(4) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's ballot and to prevent that elector's ballot from being distinguished from the ballots of other electors.

(5) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail."

Section 10. Section 13-19-106, MCA, is amended to read:

“13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each ~~return/verification~~ *signature* envelope must contain a form *that is the same as the form for absentee ballot return envelopes and that is* prescribed by the secretary of state for the elector to verify the accuracy of the elector’s address or notify the election administrator of the elector’s correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector’s ballot in a ~~return/verification~~ *signature* envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206 and 13-21-207, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the ~~return/verification~~ *signature* envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the ~~return/verification~~ *signature* envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box.

(8) Except as provided in 13-19-312, after the close of voting on election day, voted ballots must be counted and canvassed as provided in Title 13, chapter 15.”

Section 11. Section 13-19-205, MCA, is amended to read:

“13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan for the conduct of the election and shall submit it to the secretary of state in a manner that ensures that it is received at least 60 days prior to the date set for the election.

(2) The written plan must include:

(a) a timetable for the election; and

(b) sample written instructions that will be sent to the electors. The instructions must include but are not limited to:

(i) information on the estimated amount of postage required to return the ballot; ~~and~~

(ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or

(B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors; *and*

(iii) *any applicable instructions specified under 13-13-214(5).*

(3) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(5) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan unless the election is canceled for any reason provided by law.”

Section 12. Section 13-19-206, MCA, is amended to read:

“13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot for each type of election being held on the specified election day;

(b) a secrecy envelope;

(c) a ~~return/verification~~ *signature* envelope; and

(d) complete written instructions, as approved by the secretary of state pursuant to 13-19-205, for mail ballot voting procedures;

(3) ensure that each packet is:

(a) addressed to a single individual elector at the most current address available from the official registration records; and

(b) deposited in the United States mail with sufficient postage for it to be delivered to the elector’s address; and

(4) mail the packet in a manner that conforms to postal regulations to require the return, not forwarding, of undelivered packets.”

Section 13. Section 13-19-207, MCA, is amended to read:

“13-19-207. When materials to be mailed. (1) Except as provided in subsection (2), for any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day.

(2) (a) All ballots mailed to electors on the active list *and provisionally registered list* must be mailed the same day.

(b) At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the election administrator’s office to:

(i) an elector on the inactive list after the elector reactivates the elector’s registration as provided in 13-2-222; or

(ii) an individual who registers under the late registration option provided for in 13-2-304.

(c) An elector on the inactive list shall vote at the election administrator’s office on election day if the elector reactivates the elector’s registration after noon on the day before election day.

(d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator’s office.”

Section 14. Section 13-19-301, MCA, is amended to read:

“13-19-301. Voting mail ballots. (1) Upon receipt of a mailed ballot, the elector may vote by:

- (a) marking the ballot in the manner specified;
- (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
- (c) placing the secrecy envelope *containing one ballot for each election being held* in the ~~return/verification signature~~ envelope;
- (d) executing the affidavit printed on the ~~return/verification signature~~ envelope; and
- (e) returning the ~~return/verification signature~~ envelope with the secrecy envelope ~~containing the ballot~~ *all appropriate enclosures*, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when the marked ballot is received at a place of deposit.”

Section 15. Section 13-19-303, MCA, is amended to read:

“13-19-303. Voting by elector when absent from place of residence during conduct of election. (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

- (a) vote in person in the election administrator’s office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or
- (b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than the address that appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) (a) Ballots mailed to electors on the active list *and provisionally registered list* pursuant to this section must be mailed the same day that all other ballots are mailed, except that a ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is available.

(b) A ballot may be provided pursuant to this section until noon on the day before election day if, after the ballots are mailed to active *and provisionally registered* electors:

- (i) an inactive elector reactivates the elector’s registration as provided in 13-2-222; or
- (ii) an individual registers under the late registration option provided for in 13-2-304 *and receives a ballot in person.*”

Section 16. Section 13-19-305, MCA, is amended to read:

“13-19-305. Replacement ballots — procedures. (1) ~~An elector may obtain a replacement ballot as provided in this section if the original ballot is destroyed, spoiled, lost, or not received by the elector~~ *Replacement ballots may be issued as specified in 13-13-204.*

~~(2) An elector seeking or receiving a replacement ballot shall sign a sworn statement stating that the original ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.~~

~~(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before another ballot may be issued.~~

~~(4) The election administrator shall designate the election administrator's office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.~~

~~(5) A replacement ballot may also be issued pursuant to 13-19-313.~~

~~(6) The election administrator shall keep a record of each replacement ballot issued. If the election administrator later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, the election administrator shall immediately notify the county attorney and the secretary of state of each instance."~~

Section 17. Section 13-19-306, MCA, is amended to read:

"13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or the elector's agent or designee may return the elector's ballot on or before election day by either:

(a) depositing the ~~return/verification~~ *signature* envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) Except as provided in 13-21-206 *and* 13-21-207, in order for the ballot to be counted, each elector shall return it in a manner that ensures it is received prior to 8 p.m. on election day."

Section 18. Section 13-19-308, MCA, is amended to read:

"13-19-308. Disposition of ballots returned in person. Ballots *If a ballot is returned in person by the elector or the elector's agent or designee must be processed as follows:*

(1) ~~If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector, agent, or designee is present, officials shall:~~

~~(a) verify the signature pursuant to 13-19-310;~~

~~(b) resolve any questions as to the validity of the ballot as provided in 13-19-314; and~~

~~(c) deposit the unopened secrecy envelope containing the voted ballot in the official ballot box.~~

~~(2) If returned to a place of deposit other than the election administrator's office, the election officials on location shall:~~

~~(a)(1) keep a log of the names of all electors for whom the officials receive ballots;~~

~~(b)(2) deposit the unopened ~~return/verification~~ *signature* envelope in the sealed ballot transport box provided for that purpose; and~~

~~(e)(3) securely retain all voted ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots handled in the same manner provided for ballots returned by mail under 13-19-309."~~

Section 19. Section 13-19-309, MCA, is amended to read:

"13-19-309. Disposition of ballots returned by mail to election administrator's office. (1) ~~Upon receipt of each ~~return/verification~~ envelope, election officials shall:~~

~~(a) compare the name with the official register to determine that the person has not previously voted;~~

~~(b) verify the signature on the affidavit in the manner provided by 13-19-310;~~

~~(c) open the return/verification envelope and retain it as an official record;~~

~~(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;~~

~~(e) if the ballot is valid, record the name of the elector in the official register as having voted; and~~

~~(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.~~

~~(2) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-19-314. Ballots returned to the election administrator's office must be handled as provided for absentee ballots in 13-13-241."~~

Section 20. Section 13-19-312, MCA, is amended to read:

"13-19-312. Counting Preparation for count and counting procedure. (1) *The preparation for counting ballots must be as provided in 13-15-201.*

~~(1)(2)~~ Except as provided in subsection ~~(2)~~ (3), after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the voted ballot; and

(c) proceed to count the votes as provided in Title 13, chapter 15.

~~(2)(3)~~ On election day, the election administrator may begin the procedures described in subsection ~~(1)~~ (2) before the polls close if the election administrator complies with the procedures described in 13-15-207(3)."

Section 21. Section 13-19-313, MCA, is amended to read:

"13-19-313. Notice to elector — opportunity to resolve questions. ~~(1)~~ As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator:

~~(a) is unable to verify the elector's or agent's signature under 13-19-310;~~

~~(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311; or~~

~~(c) finds that the elector has failed to attest to the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address as provided in 13-19-106.~~

~~(2)~~ The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

~~(a) by mail or in person, verify the elector's or agent's signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form;~~

~~(b) by mail, facsimile, telephone, or electronic means, provide the address information required under 13-19-106 or correct any minor mistake if the correction would render the ballot valid; or~~

~~(c) if necessary, request and receive a replacement ballot and vote it at the election administrator's office.~~

~~(3)~~ The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

Notice to the elector and the opportunity to resolve questions must be as provided in [section 7], except as follows:

~~(4)~~—(a)(1) If a mail ballot is returned as undeliverable, the election administrator shall ~~investigate~~ *attempt to contact the elector by the most expedient means available to determine* the reason for the return and mail a confirmation notice *if the elector cannot be contacted otherwise*. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.

~~(b)~~(2) If the confirmation notice is returned to the election administrator, *the election administrator shall place the elector* ~~must be placed~~ on the inactive list provided for in 13-2-220 until the elector becomes a qualified elector.”

Section 22. Repealer. The following sections of the Montana Code Annotated are repealed:

13-19-310. Signature verification — procedures.

13-19-311. Valid ballots — requirements.

Section 23. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 13, chapter 13, part 2, and the provisions of Title 13, chapter 13, part 2, apply to [section 7].

Section 24. Effective date. [This act] is effective January 1, 2012.

Approved April 1, 2011

CHAPTER NO. 102

[HB 141]

AN ACT GENERALLY REVISING THE MAKEUP, OPERATION, AND PROCEDURES OF THE BOARD OF PARDONS AND PAROLE; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-210, 46-23-215, 46-23-218, 46-23-301, 46-23-302, 46-23-306, 46-23-307, AND 46-23-1025, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 2-15-2302, MCA, is amended to read:

“2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial. (1) There is a board of pardons and parole.

(2) The board consists of ~~three~~ *seven* members ~~and four auxiliary members~~, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. One member must be an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board. Members of the board, ~~including the auxiliary members~~, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

~~(3) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.~~

(3) *The governor shall attempt to establish geographic balance among board members.*

(4) Board members ~~and auxiliary members~~ shall serve staggered 4-year terms. The governor shall appoint ~~one member and two auxiliary~~ *three* members in January of the first year of the governor's term, ~~one member and one auxiliary member~~ *two members* in January of the second year of the governor's term, and ~~one member and one auxiliary member~~ *two members* in January of the third year of the governor's term. *The provisions of 2-15-124(2) do not apply to the board.*

(5) The terms of board members ~~and auxiliary members~~ run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board, ~~including the auxiliary members~~, is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

~~(8) The provisions of 2-15-124(2) do not apply to the board.~~

(8) A favorable vote of at least a majority of the seven members of the board is required to implement any policy, procedure, or administrative rule. A favorable vote of at least a majority of the members of a hearing panel, as defined in 46-23-103, is required to make decisions regarding parole and executive clemency, and the provisions of 2-15-124(8) do not apply.

Section 2. Section 46-23-103, MCA, is amended to read:

"46-23-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Hearing panel" means a panel made up of ~~at least two or three~~ board members appointed by the board to conduct parole hearings, *revocation hearings, rescission hearings, and administrative parole reviews and to make final decisions and recommendations in matters of executive clemency.*

(5) "Parole" means the release to the community of a prisoner by the decision of a hearing panel prior to the expiration of the prisoner's term, subject to conditions imposed by the hearing panel and subject to supervision of the department.

(6) "Victim" means a victim as defined in 46-18-243."

Section 3. Section 46-23-104, MCA, is amended to read:

"46-23-104. Board of pardons and parole. (1) The board of pardons and parole is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet monthly at a place determined by the board and at other times and places that the board considers necessary.

(3) The principal office of the board is in Deer Lodge.

(4) The *presiding officer of the board or a designee in consultation with the members* shall appoint hearing panels *and their presiding officers* to conduct parole hearings and to issue a final decision *decisions* concerning parole and executive clemency and shall request out-of-state releasing authorities to conduct hearings pursuant to Article IV(6) of the Western Interstate Corrections Compact. ~~If the two board members of the hearing panel are unable to reach a unanimous decision, the presiding officer of the board shall convene a panel of three board members as soon as is practicable to rehear the case. The presiding officer of the board or a designee shall attempt to make hearing panel appointments in a manner that ensures equitable distribution of workload among board members. If a hearing panel consisting of two members is unable to reach a unanimous decision, the presiding officer of the board shall appoint a third member to consider all pertinent information and render a final decision.~~ The hearing panels have the full authority and power of the board to order the denial, grant, or revocation of parole *and to make final decisions and recommendations in matters of executive clemency.*"

Section 4. Section 46-23-109, MCA, is amended to read:

"46-23-109. Parole hearings and administrative reviews — telephone — videoconference. The board ~~and the board's hearing panel panels~~ may hold any parole hearing via interactive videoconference, and may hold an administrative review via telephone conference, *and, at the applicant's request, may hold a clemency hearing via telephone conference.*"

Section 5. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole — rulemaking.

(1) Subject to the restrictions contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person who is confined in a state prison or the state hospital, ~~or~~ any person who is sentenced to the state prison and confined in a prerelease center, *or any person who has been sentenced to prison as an adult pursuant to 41-5-206 and is confined in a youth correctional facility* when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be ~~paroled~~ *granted a nonmedical parole.*

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

(6) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request earlier hearing or review."

Section 6. Section 46-23-202, MCA, is amended to read:

"46-23-202. Initial parole hearing — conduct of hearing. Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the department shall make the prisoner available for a hearing

before a hearing panel. The hearing panel shall consider all available and pertinent information regarding the prisoner, including:

- (1) the circumstances of the offense;
- (2) the prisoner's previous social history and criminal record;
- (3) the prisoner's conduct, employment, and attitude in prison;
- (4) the reports of any physical, *psychological*, and mental ~~examinations~~ *evaluations* that have been made; and
- (5) written or oral statements from *criminal justice authorities* or any other interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the prisoner should be paroled. The victim's statement may be kept confidential."

Section 7. Section 46-23-210, MCA, is amended to read:

"46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order any person confined in a state prison or *adult community corrections facility* or any person sentenced to a state prison and confined in a prerelease center who:

- (a) is not under sentence of death or sentence of life imprisonment without possibility of release;
- (b) is unlikely to pose a detriment to the person, victim, or community; and
- (c) (i) has a medical condition requiring extensive medical attention; or
(ii) has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.

(2) A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. *If the court does not respond within 30 days to a written request from the department, the person is considered to be approved by the court for medical parole.* The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).

(3) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:

- (a) a description of the medical attention required to treat the person's medical condition;
- (b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and
- (c) a prognosis addressing the likelihood of the person's recovery from the medical condition or diagnosis and the extent of any potential recovery. The prognosis may include whether the person has a medical condition causing the likelihood of death within 6 months.

(4) The application must be reviewed and accepted by the department before the board may consider granting a medical parole.

(5) Upon receiving the application from the department, ~~the board~~ *a hearing panel* shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.

(6) The ~~board~~ *hearing panel* shall require as a condition of medical parole that the person agree to placement in an environment approved by the department during the parole period, including but not limited to a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program, or to a family home. The ~~board~~ *hearing panel* may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's medical condition has improved to the extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the person, victim, or community, ~~the board~~ *a hearing panel* may revoke the parole and return the person to the custody of the department.

(7) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.

(9) Before July 1 of each even-numbered year, the board *and the department* shall report to the children, families, health, and human services interim committee and the law and justice interim committee regarding the outcome related to any person released on medical parole since the last report, including health care costs and payments related to the care of the person released on medical parole."

Section 8. Section 46-23-215, MCA, is amended to read:

"46-23-215. Conditions of parole. (1) A prisoner while on parole remains in the legal custody of the department but is subject to the orders of the board.

(2) When a hearing panel issues an order for parole, the order must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. The prisoner may not be paroled until the prisoner provides a biological sample for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense as defined in 46-23-502. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a hearing panel grants a parole to a prisoner on the condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the hearing panel *or the presiding officer of the board or a designee* may grant the prisoner a furlough, not to exceed two *consecutive* 10-day periods, for purposes of fulfilling the condition. While on furlough, the prisoner *is not on parole and is subject to official detention as defined in 45-7-306. The prisoner remains in the legal custody of the department and is subject to all other conditions recited ordered* by the hearing panel *or the presiding officer of the board or a designee.*"

Section 9. Section 46-23-218, MCA, is amended to read:

“46-23-218. Authority of board to adopt rules — purpose for training. (1) The board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference administrative reviews, progress reviews, clemency proceedings, the conditions to be imposed upon parolees, the training of board members ~~and auxiliary members~~ regarding American Indian culture and problems, and other matters pertinent to service on the board.

(2) The legislature finds that American Indians incarcerated in state prisons constitute a disproportionate percentage of the total inmate population when compared to the American Indian population percentage of the total state population. The training of board members regarding American Indian culture and problems is necessary in order for the board to deal appropriately with American Indian inmates appearing before the board.”

Section 10. Section 46-23-301, MCA, is amended to read:

“46-23-301. Cases of executive clemency — application for clemency — definitions. (1) (a) “Clemency” means kindness, mercy, or leniency that may be exercised by the governor toward a convicted person. The governor may grant clemency in the form of:

- (i) the remission of fines or forfeitures;
- (ii) the commutation of a sentence to one that is less severe;
- (iii) respite; or
- (iv) pardon.

(b) “Pardon” means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an application for clemency, except that an application may not be filed with respect to a sentence of death while an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through 46-18-310. The board shall consider cases of executive clemency only upon application. All applications for executive clemency must be made to the board. An application for executive clemency in capital cases may be filed with the board no later than 10 days after the district court sets a date of execution. Applications may be filed only by the person convicted of the crime, by the person’s attorney acting on the person’s behalf and with the person’s consent, or by a court-appointed next friend, guardian, or conservator acting on the person’s behalf. ~~The board~~ *After a hearing panel has considered an application for executive clemency and has by majority vote favored a hearing, the hearing panel shall cause an investigation to be made of and base any recommendation it makes on:*

(a) all the circumstances surrounding the crime for which the applicant was convicted; ~~and~~

(b) *the applicant’s criminal record; and*

~~(b)~~(c) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(3) ~~The board shall advise the governor and recommend action to be taken. The board~~ *A hearing panel may recommend that clemency be granted or denied. In noncapital cases, if the board hearing panel recommends that clemency be denied, the application may not be forwarded to the governor and the governor may not take action on the case. In capital cases, the board hearing panel shall*

transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the ~~board~~ *hearing panel*, but the governor shall review the record of the hearing and the ~~board's~~ *hearing panel's* recommendation before granting or denying clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to the governor. An appeal may not be taken from the governor's decision to grant or deny clemency."

Section 11. Section 46-23-302, MCA, is amended to read:

"46-23-302. Order for hearing on application for executive clemency. After the ~~board~~ *a hearing panel* has considered an application for executive clemency and has by majority vote favored a hearing, it shall pass an order in substance as follows:

"Whereas, the Board of Pardons and Parole has officially received an application for executive clemency concerning, a convict confined in the state prison (or concerning, who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of.... committed at, in the county of, State of Montana, on the day of, 20..., and sentenced for a term of years.

Therefore, it is ordered that, the day of, 20..., is set for the consideration of the executive clemency matter and all persons having an interest in the matter who desire to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture are notified to be present at o'clock of that day, at

Further, it is ordered that a copy of this order be printed and published in the.... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at, in the county of, once each week for 2 weeks beginning, 20..., and ending"

Section 12. Section 46-23-306, MCA, is amended to read:

"46-23-306. Record of hearing. At the hearing, the ~~board~~ *hearing panel* must cause to be kept a record showing:

- (1) the names of all persons appearing before the ~~board~~ *hearing panel* on behalf of the person seeking clemency from the governor;
- (2) the names of all persons appearing before the ~~board~~ *hearing panel* in opposition to the granting of the same;
- (3) the testimony of all persons giving evidence before the ~~board~~ *hearing panel*;
- (4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing."

Section 13. Section 46-23-307, MCA, is amended to read:

"46-23-307. Decision of board. Within 30 days after the hearing of any capital case or in noncapital cases where the decision is made to recommend clemency be granted, the ~~board~~ *hearing panel* must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor."

Section 14. Section 46-23-1025, MCA, is amended to read:

"46-23-1025. Report to and action by board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated

a condition of parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report must be accompanied by the findings of the hearings officer.

(2) Upon receipt of a report, the board shall cause the prisoner to be promptly brought before a hearing panel for a hearing on the violation charged under rules that the board may adopt. If the violation is established, the hearing panel may continue or revoke the parole or may enter an order as it sees fit.

(3) If the prisoner has violated a condition of release requiring the payment of restitution, the ~~board~~ *supervising parole officer* shall notify the victim of the offense prior to the hearing required by ~~subsection (2) 46-23-1024~~ and give the victim an opportunity to ~~be heard~~ *provide written or oral comment*.

(4) If the hearing panel finds that because of circumstances beyond the prisoner's control the prisoner is unable to make the required restitution payments, the hearing panel may not revoke the prisoner's parole for failure to pay restitution. The hearing panel may modify the time or method of making restitution and may extend the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the prisoner.

~~(4)~~(5) If the hearing panel determines that the prisoner has violated the provisions of release, the hearing panel shall determine ~~whether the time from the issuing of the warrant to the date of the prisoner's return to the custody of Montana law enforcement, the department, or the department's agent or any part of the time will be counted as time served under the sentence~~ *the amount of time, if any, that will be counted as time served while the prisoner was in violation of the provisions of release.*"

Section 15. Effective date. [This act] is effective July 1, 2011.

Section 16. Implementation — staggered terms. A person serving on the board of pardons and parole as an auxiliary member on [the effective date of this act] becomes a regular board member on [the effective date of this act] and shall serve as a regular board member for the unexpired portion of the term to which the person was initially appointed as an auxiliary member.

Section 17. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to applications made to the board on or before [the effective date of this act] and that are pending decision on [the effective date of this act].

Approved April 1, 2011

CHAPTER NO. 103

[HB 254]

AN ACT REVISING MOTOR CLUB SERVICE LAWS; EXEMPTING CERTAIN AGENTS AND COMPANIES FROM CERTAIN LICENSING REQUIREMENTS; AMENDING SECTION 61-12-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-12-314, MCA, is amended to read:

"61-12-314. Applicability. This part does not apply to:

(1) a duly authorized attorney at law acting in the usual course of the profession ~~or to any~~;

(2) *an insurance company, bonding company, or surety company licensed and doing business as the licensed company under the laws of the state; or*

(3) *a company or agent that contracts with a motor club service company licensed under this part to provide emergency road service or towing service to the company's or agent's customers."*

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

Approved April 1, 2011

CHAPTER NO. 104

[HB 259]

AN ACT REQUIRING THE DRIVER OF A VEHICLE ON A HIGHWAY THAT INTERSECTS ANOTHER HIGHWAY WITHOUT CROSSING IT TO YIELD THE RIGHT-OF-WAY; AND AMENDING SECTION 61-8-339, MCA.

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

Section 1. Section 61-8-339, MCA, is amended to read:

"61-8-339. Vehicle approaching or entering intersection. (1) (a) ~~When~~ *Except as provided in subsection (1)(b), when two or more vehicles enter or approach an intersection from different highways, the driver of the vehicle on the left shall yield the right-of-way to all vehicles approaching from the right that are close enough to constitute an immediate hazard.*

(b) *The driver of a vehicle on a highway that intersects another highway without crossing it shall yield the right-of-way to all vehicles approaching from the other highway that are close enough to constitute an immediate hazard.*

(2) The right-of-way rule declared in subsection (1) is modified at through highways and otherwise as stated in this chapter."

Approved April 1, 2011

CHAPTER NO. 105

[HB 270]

AN ACT ESTABLISHING THE HIGHWAY PATROL OFFICER MICHAEL W. HAYNES MEMORIAL HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Michael W. Haynes proudly and honorably served the citizens of the great state of Montana as a Highway Patrol Trooper and had an exemplary service record; and

WHEREAS, Michael saved many lives during his service while being one of the top enforcers of violations that take many of our citizens, specifically driving under the influence; and

WHEREAS, we honor his final sacrifice, possibly saving some other innocent victim, and his final duty to the citizens of Montana.

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

Section 1. Highway patrol officer Michael W. Haynes memorial highway. (1) There is established the highway patrol officer Michael W. Haynes memorial highway on the existing U.S. highway 93 from the

intersection with Montana highway 82 to the southern boundary of the city of Kalispell.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved April 1, 2011

CHAPTER NO. 106

[HB 273]

AN ACT ALLOWING FOR THE OPERATION OF OFF-HIGHWAY VEHICLES ON CERTAIN PUBLIC ROADS WHEN AUTHORIZED BY A LOCAL GOVERNMENT OR THE STATE HIGHWAY PATROL.

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

Section 1. Operation on public roads, streets, and highways. (1) A person may operate an off-highway vehicle on a controlled-access highway or facility only if the vehicle is registered and licensed under 61-3-301 and the operator possesses a license to drive the vehicle issued under Title 61, chapter 5.

(2) Off-highway vehicle operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only if:

(a) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(b) operation is authorized on municipal streets by municipal ordinance.

(3) An off-highway vehicle may not be operated as allowed under subsection (2) unless it is equipped with at least one headlamp and one taillamp, which must be lighted at all times during operation, and unless it is equipped with a suitable braking device operable by either hand or foot.

(4) (a) Except as provided in subsection (4)(b), a person who operates an off-highway vehicle when allowed under subsection (2) must have in the person's possession a license to drive a motor vehicle issued under Title 61, chapter 5.

(b) An operator is exempt from the requirement to possess a license when operating an off-highway vehicle as allowed under subsection (2) if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of operation of the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license to drive a motor vehicle.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 8, and the provisions of Title 23, chapter 2, part 8, apply to [section 1].

Approved April 1, 2011

CHAPTER NO. 107

[HB 293]

AN ACT PROVIDING THAT THE PROPERTY TAX EXEMPTION FOR VETERANS' ORGANIZATIONS EXTENDS TO LAND OWNED BY THE ORGANIZATION CONTINUOUSLY SINCE 1960; AMENDING SECTION 15-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 15-6-203, MCA, is amended to read:

"15-6-203. Veterans' exemptions — clubhouse exemption — land — incompetent veterans' trusts. (1) (a) A clubhouse, ~~or~~ building, or land erected by or belonging to any society or organization of honorably discharged United States military personnel that is used primarily for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit, ~~together with the personal property necessarily used in the building,~~ is exempt from taxation.

(b) The clubhouse or building exemption provided for in this section applies:

(i) to the personal property necessarily used in the building; and

(ii) even if a business, intended primarily for the use of the members, is required to be open to the public and is operated in a portion of the building.

(c) The land exemption provided for in this section applies only to land owned by the society or organization continuously since January 1, 1960.

(2) All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of the veterans, when the property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, is exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in the minor's own right on account of removal of legal disability."

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

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010.

Approved April 1, 2011

CHAPTER NO. 108

[HB 348]

AN ACT PROVIDING AN ALTERNATE SOURCE FOR AN OUTDATED REFERENCE TO INTEREST RATES BASED ON THE PRIME RATE; AMENDING SECTIONS 7-8-2304, 31-1-107, AND 33-3-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE AND APPLICABILITY DATE.

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

Section 1. Section 7-8-2304, MCA, is amended to read:

“7-8-2304. Terms for sale of tax-deed land. (1) A sale must be made for cash or, in the case of real property, on terms that the board of county commissioners approves.

(2) (a) If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at a rate established by the board of county commissioners. The rate may not exceed more than 4 percentage points a year above the prime rate of major New York banks, as published in the Wall Street Journal published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans dated within 7 days prior to the date of sale.

(b) If a sale is made on terms, the presiding officer of the board shall execute a contract containing the terms that are provided by a contract approved by the department of revenue.”

Section 2. Section 31-1-107, MCA, is amended to read:

“31-1-107. Interest rate allowed by agreement. (1) Parties may agree in writing for to the payment of any rate of interest that does not exceed the greater of 15% or an amount that is 6 percentage points per annum year above the prime rate of major New York banks, as published in the Wall Street Journal edition published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans dated 3 business days prior to the execution of the agreement. Interest must be allowed according to the terms of the agreement.

(2) A loan that is not usurious when made is lawful for the duration of the loan, provided the loan agreement is not substantially changed. This subsection does not apply to loan renewals.

(3) The provisions of this section do not apply to regulated lenders as defined in 31-1-111.”

Section 3. Section 33-3-431, MCA, is amended to read:

“33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of the insurer’s organization, to provide the insurer with surplus funds, or for any purpose of the insurer’s business upon a written agreement that the money is required to be repaid only out of the insurer’s surplus in excess of that stipulated in the agreement. The agreement may provide for interest at a rate not to exceed the greater of the rate established in 25-9-205 or a rate that is 6 percentage points per year higher than the prime rate of major New York banks as published in the Wall Street Journal edition published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans dated 3 business days prior to the execution of the agreement. The agreement must specify whether the interest constitutes a liability of the insurer. A commission or promotion expense may not be paid in connection with a loan of the type described in this section.

(2) Money borrowed, together with the interest if stipulated in the agreement, does not form a part of the insurer’s legal liabilities except as to the insurer’s surplus in excess of the amount stipulated in the agreement or the basis of any setoff. However, until the money or interest, or both, are repaid, financial statements filed or published by the insurer must show as a footnote the amount then unpaid together with any interest accrued but unpaid.

(3) A loan of this type to a mutual or stock insurer is subject to the commissioner’s approval. The insurer shall, in advance of the loan, file with the

commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement are approved unless within 15 days after filing the insurer is notified of the commissioner's disapproval and reasons for the disapproval. The commissioner shall disapprove any proposed loan or agreement if the commissioner finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information filed by the insurer is inadequate.

(4) A loan to a mutual or stock insurer or a substantial portion of the loan must be repaid by the insurer when the loan is no longer reasonably necessary for the purpose originally intended. Repayment of either principal or interest on the loan may not be made by a mutual or stock insurer unless approved in advance by the commissioner.

(5) This section does not apply to loans obtained by the insurer in the ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets."

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to all interest rate agreements governed by 7-8-2304, 31-1-107, or 33-3-431 made on or after [the effective date of this act].

Approved April 1, 2011

CHAPTER NO. 109

[HB 374]

AN ACT REVISING LAWS RELATING TO POWERS OF ATTORNEY; ADOPTING THE UNIFORM POWER OF ATTORNEY ACT TO REPLACE THE STATUTORY FORM POWER OF ATTORNEY ACT; PROVIDING CAUSES OF ACTION AND PENALTIES FOR THE INTENTIONAL DISSIPATION OF AN ESTATE THROUGH THE USE OF A POWER OF ATTORNEY; AMENDING SECTIONS 72-3-917, 72-5-501, 72-5-502, 72-31-222, 72-31-223, 72-31-224, 72-31-225, 72-31-226, 72-31-227, 72-31-228, 72-31-229, 72-31-230, 72-31-231, 72-31-232, 72-31-233, 72-31-234, 72-31-235, 72-31-236, AND 72-31-238, MCA; AND REPEALING SECTIONS 72-31-201 AND 72-31-237, MCA.

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

Section 1. Short title. This part may be cited as the "Uniform Power of Attorney Act".

Section 2. Definitions. As used in this part, the following definitions apply:

(1) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.

(2) "Durable", with respect to a power of attorney, means not terminated by the principal's incapacity.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Good faith" means honesty in fact.

(5) "Incapacity" means inability of an individual to manage property or business affairs because the individual:

(a) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(b) is:

(i) missing; or

(ii) outside the United States and unable to return.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(8) (a) "Presently exercisable general power of appointment", with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period.

(b) The term does not include a power exercisable in a fiduciary capacity or only by will.

(9) "Principal" means an individual who grants authority to an agent in a power of attorney.

(10) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(11) "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.

(12) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Section 3. Applicability. This part applies to all powers of attorney except:

(1) a power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(2) a power to make health care decisions;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(4) a power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

Section 4. Execution of power of attorney. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

Section 5. Validity of power of attorney. (1) A power of attorney executed in this state on or after [the effective date of this act] is valid if its execution complies with [section 4].

(2) A power of attorney executed in this state before [the effective date of this act] is valid if its execution complied with the law of this state as it existed at the time of execution.

(3) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(a) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to [section 6]; or

(b) the requirements for a military power of attorney pursuant to 10 U.S.C. 1044b.

(4) Except as otherwise provided by statute other than this part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Section 6. Meaning and effect of power of attorney. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Section 7. Nomination of conservator or guardian — relation of agent to court-appointed fiduciary. (1) In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(2) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

Section 8. When power of attorney effective. (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the

principal is incapacitated or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(a) a physician that the principal is incapacitated within the meaning of [section 2(5)(a)]; or

(b) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of [section 2(5)(b)].

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and applicable regulations to obtain access to the principal's health care information and communicate with the principal's health care provider.

Section 9. Termination of power of attorney or agent's authority. (1)

A power of attorney terminates when:

(a) the principal dies;

(b) the principal becomes incapacitated if the power of attorney is not durable;

(c) the principal revokes the power of attorney;

(d) the power of attorney provides that it terminates;

(e) the purpose of the power of attorney is accomplished; or

(f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority terminates when:

(a) the principal revokes the authority;

(b) the agent dies, becomes incapacitated, or resigns;

(c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation unless the power of attorney otherwise provides; or

(d) the power of attorney terminates.

(3) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (2), notwithstanding a lapse of time since the execution of the power of attorney.

(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

Section 10. Coagents or successor agents. (1) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

(a) has the same authority as that granted to the original agent; and

(b) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except as otherwise provided in the power of attorney and subsection (4), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(4) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action.

Section 11. Reimbursement and compensation of agent. Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

Section 12. Agent's acceptance. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

Section 13. Agent's duties. (1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(a) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(b) act in good faith; and

(c) act only within the scope of authority granted in the power of attorney.

(2) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(a) act loyally for the principal's benefit;

(b) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(c) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

(d) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(e) cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and

(f) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

- (i) the value and nature of the principal's property;
- (ii) the principal's foreseeable obligations and need for maintenance;
- (iii) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
- (iv) eligibility for a benefit, a program, or assistance under a statute or regulation.

(3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(7) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

Section 14. Exoneration of agent. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Section 15. Judicial relief. (1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

- (a) the principal or the agent;
- (b) a guardian, conservator, or other fiduciary acting for the principal;

- (c) a person authorized to make health care decisions for the principal;
- (d) the principal's spouse, parent, or descendant;
- (e) an individual who would qualify as a presumptive heir of the principal;
- (f) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;
- (g) a governmental agency having regulatory authority to protect the welfare of the principal;
- (h) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and
- (i) a person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

Section 16. Agent's liability. An agent that violates this part is liable to the principal or the principal's successors in interest for the amount required to:

- (1) restore the value of the principal's property to what it would have been had the violation not occurred; and
- (2) reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

Section 17. Agent's resignation — notice. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

- (1) to the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or
- (2) if there is no person described in subsection (1), to:
 - (a) the principal's caregiver;
 - (b) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or
 - (c) a governmental agency having authority to protect the welfare of the principal.

Section 18. Acceptance of and reliance upon acknowledged power of attorney. (1) For purposes of [section 19] and this section, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under [section 4] that the signature is genuine.

(3) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

(4) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

- (a) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;

(b) an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(c) an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(5) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

(6) For purposes of [section 19] and this section, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

Section 19. Liability for refusal to accept acknowledged power of attorney. (1) Except as otherwise provided in subsection (2):

(a) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under [section 18(4)] no later than 7 business days after presentation of the power of attorney for acceptance;

(b) if a person requests a certification, a translation, or an opinion of counsel under [section 18(4)], the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation, or opinion of counsel; and

(c) a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(c) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) a request for a certification, a translation, or an opinion of counsel under [section 18(4)] is refused;

(e) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under [section 18(4)] has been requested or provided; or

(f) the person makes or has actual knowledge that another person has made a report to the local office of the department of public health and human services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(a) a court order mandating acceptance of the power of attorney; and

(b) liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

Section 20. Principles of law and equity. Unless displaced by a provision of this part, the principles of law and equity supplement this part.

Section 21. Laws applicable to financial institutions and entities. This part does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this part.

Section 22. Remedies under other law. The remedies under this part are not exclusive and do not abrogate any right or remedy under the law of this state other than this part.

Section 23. Authority that requires specific grant — grant of general authority. (1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- (a) create, amend, revoke, or terminate an inter vivos trust;
- (b) make a gift;
- (c) create or change rights of survivorship;
- (d) create or change a beneficiary designation;
- (e) delegate authority granted under the power of attorney;
- (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (g) exercise fiduciary powers that the principal has authority to delegate; or
- (h) disclaim property, including a power of appointment.

(2) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent or in an individual to whom the agent owes a legal obligation of support an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(3) Subject to subsections (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in 72-31-224 through 72-31-236.

(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to [section 43].

(5) Subject to subsections (1), (2), and (4), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(7) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

Section 24. Incorporation of authority. (1) An agent has authority described in 72-31-224 through 72-31-236, [sections 23 and 43], and this section if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in 72-31-224 through 72-31-236 and [section 43] or cites the section in which the authority is described.

(2) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in 72-31-224 through 72-31-236 and [section 43] or a citation to a section of 72-31-224 through 72-31-236 and [section 43] incorporates the entire section as if it were set out in full in the power of attorney.

(3) A principal may modify authority incorporated by reference.

Section 25. Section 72-3-917, MCA, is amended to read:

“72-3-917. Distribution to person under disability. (1) A personal representative may discharge the personal representative’s obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative’s obligation to distribute to a minor or person under other disability as authorized by 72-5-104, ~~72-5-501~~, or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding \$10,000 a year or property not exceeding \$10,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of the disabled person, but the receiving person may not accept any pay except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3).”

Section 26. Section 72-5-501, MCA, is amended to read:

“72-5-501. When health care power of attorney not affected by disability. (1) A durable *health care* power of attorney is a power of attorney by which a principal designates another as the principal’s attorney-in-fact or agent in writing and the writing contains the words, “This *health care* power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time” or “This *health care* power of attorney becomes effective upon the disability or incapacity of the principal” or similar words showing the intent of the principal that the authority conferred must be exercisable notwithstanding the principal’s subsequent disability or incapacity and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. ~~All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal’s successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.~~

(2) If a ~~conservator~~ *guardian* is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the ~~conservator~~ *guardian* as well as the principal. The ~~conservator~~ *guardian* has the same power to revoke or amend the *health care* power of attorney that the principal would have had if the principal were not disabled or incapacitated. A principal may nominate, by a durable *health care* power of attorney, the ~~conservator of the principal's estate or~~ guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable *health care* power of attorney except for good cause or disqualification."

Section 27. Section 72-5-502, MCA, is amended to read:

~~72-5-502. Power~~ *Health care power of attorney not revoked until notice.* (1) ~~The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal.~~

(2)(1) ~~The disability or incapacity of a principal who has previously executed a *health care* power of attorney that is not a durable *health care* power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.~~

(3)(2) ~~As to acts undertaken in good faith reliance on a *health care* power of attorney, an affidavit executed by the attorney-in-fact or agent stating that the attorney-in-fact or agent did not have, at the time of exercising the power, actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable.~~

(4)(3) ~~This section does not affect any provision in a *health care* power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity."~~

Section 28. Section 72-31-222, MCA, is amended to read:

~~72-31-222. Durable power~~ *Power of attorney is durable.* A power of attorney ~~legally sufficient~~ *created* under this part is durable ~~to the extent that durable powers are permitted by other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent."~~ showing the intent of the principal that the power granted may be exercised notwithstanding later disability, ~~unless it expressly provides that it is terminated by the incapacity, or incompetency of the principal."~~

Section 29. Section 72-31-223, MCA, is amended to read:

~~72-31-223. Construction of powers authority generally.~~ *By Except as otherwise provided in the power of attorney, by executing a statutory power of attorney with respect to that incorporates a subject listed described in 72-31-201(1) 72-31-224 through 72-31-236 and [section 43] or that grants to an agent authority to do all acts that a principal could do pursuant to [section*

~~23(3)], the a principal, except as limited or extended by the principal in the power of attorney, empowers~~ *authorizes* the agent, ~~for~~ *with respect to* that subject, to:

(1) demand, receive, and obtain, by litigation or otherwise, money or ~~other~~ *another* thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, *cancel, terminate,* reform, *restate,* release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, *file,* and ~~deliver a deed, revocation, mortgage, lease, notice, check, release, or other record~~ *any instrument or communication* the agent considers desirable to accomplish a purpose of a transaction, *including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;*

(4) ~~prosecute, defend~~ *initiate, participate in,* submit to ~~arbitration~~ *alternative dispute resolution,* settle, ~~and oppose,~~ or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court *or other governmental agency* to carry out an act authorized by the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, *discretionary investment manager,* expert witness, or other ~~assistant advisor;~~

(7) ~~keep appropriate records of each transaction, including an accounting of receipts and disbursements;~~

~~(8)(7)~~ prepare, execute, and file a record, report, or other document ~~the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;~~

~~(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and~~

~~(8) communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality on behalf of the principal;~~

~~(9) access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and~~

~~(10) in general, do any other lawful act with respect to the subject and all property related to the subject."~~

Section 30. Section 72-31-224, MCA, is amended to read:

"72-31-224. Construction of power relating to real *Real property transactions.* ~~In~~ *Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to real property transactions empowers* *authorizes* the agent to:

(1) *demand, buy, lease, receive,* accept as a gift or as security for a ~~loan~~ *an extension of credit,* ~~reject, demand, buy, lease, receive,~~ or otherwise acquire or ~~reject~~ an interest in real property or a right incident to real property;

(2) sell, exchange, ~~or convey,~~ with or without covenants, *representations, or warranties;* quitclaim; release; surrender; ~~mortgage retain title for security;~~ encumber; partition; consent to partitioning; *subject to an easement or covenant;* subdivide; apply for zoning, ~~rezoning,~~ or other governmental permits; plat or

consent to platting; develop; grant ~~options~~ *an option* concerning; lease; ~~sublet~~ *sublease*; *contribute to an entity in exchange for an interest in that entity*; or otherwise *grant* or dispose of an interest in real property or a right incident to real property;

(3) *pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal*;

~~(3)~~(4) release, assign, satisfy, ~~and~~ or enforce, by litigation or otherwise, a mortgage, deed of trust, *conditional sale contract*, encumbrance, lien, or other claim to real property that exists or is asserted;

(4)(5) ~~do any act of management or of conservation with respect to~~ *manage or conserve* an interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including:

(a) insuring against a ~~casualty~~, liability, or *casualty or other loss*;

(b) obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;

(c) paying, *assessing*, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(d) purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

~~(5)~~(6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has or claims to have an interest or right;

~~(6)~~(7) participate in a reorganization with respect to real property or a ~~legal~~ *an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to shares of stock or obligations stocks and bonds or other property received in a plan of reorganization and to act with respect to them*, including:

(a) selling or otherwise disposing of them;

(b) exercising or selling an option, *right of conversion*, or similar right with respect to them; and

(c) *exercising any voting them rights* in person or by proxy;

(7)(8) change the form of title of an interest in or right incident to real property; *and*

(8)(9) dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.”

Section 31. Section 72-31-225, MCA, is amended to read:

“72-31-225. Construction of power relating to tangible Tangible personal property transactions. ~~In~~ *Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to tangible personal property transactions empowers authorizes* the agent to:

(1) ~~demand, buy, receive,~~ accept as a gift or as security for a ~~loan,~~ *reject, demand, buy, receive an extension of credit,* or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, *representations, or warranties, quitclaim,* release, surrender, ~~mortgage, encumber, pledge, hypothecate,~~ create a security interest in, ~~pawn,~~ grant options concerning,

lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) *grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;*

~~(3)~~(4) release, assign, satisfy, or enforce, by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and

(4)(5) do an act of management or conservation with respect to *manage or conserve* tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(a) insuring against casualty, liability, or *casualty or other* loss;

(b) obtaining or regaining possession or protecting the property or interest, by litigation or otherwise;

(c) paying, *assessing*, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(d) moving *the property* from place to place;

(e) storing *the property* for hire or on a gratuitous bailment; and

(f) using, ~~altering~~, and making repairs, or alterations, or *improvements to the property*; and

(6) *change the form of title of an interest in tangible personal property.*”

Section 32. Section 72-31-226, MCA, is amended to read:

~~“72-31-226. Construction of power relating to stock and bond transactions~~ **Stocks and bonds.** ~~In~~ *Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to stock and bond transactions empowers stocks and bonds authorizes the agent to:*

(1) buy, sell, and exchange stocks; and bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts; call and put options on stocks and stock indexes;

(2) establish, continue, modify, or terminate an account with respect to stocks and bonds;

(3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(4) receive certificates and other evidences of ownership with respect to securities stocks and bonds; and

(5) exercise voting rights with respect to securities stocks and bonds in person or by proxy; enter into voting trusts; and consent to limitations on the right to vote.”

Section 33. Section 72-31-227, MCA, is amended to read:

~~“72-31-227. Construction of power relating to commodity and option transactions~~ **Commodities and options.** ~~In~~ *Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to commodity and option transactions empowers commodities and options authorizes the agent to:*

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts; *and* call ~~and or~~ put options on stocks ~~and or~~ stock indexes traded on a regulated option exchange; and

(2) establish, continue, modify, and terminate option accounts ~~with a broker.~~"

Section 34. Section 72-31-228, MCA, is amended to read:

~~"72-31-228. Construction of power relating to banking Banks and other financial institution transactions institutions. In Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to banking banks and other financial institution transactions empowers institutions authorizes the agent to:~~

(1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) ~~hire~~ contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

~~(4) contract to procure other services available from a financial institution as the agent considers desirable;~~

~~(5)~~(4) withdraw, by check, order, *electronic funds transfer*, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

~~(6)~~(5) receive bank statements of account, vouchers, notices, and similar documents from a financial institution and to act with respect to them;

~~(7)~~(6) enter a safe deposit box or vault and withdraw or add to the contents;

~~(8)~~(7) borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow; money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

~~(9)~~(8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; transfer money, receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due;

~~(10)~~(9) receive for the principal and act upon a sight draft, warehouse receipt, other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

~~(11)~~(10) apply for, and receive, and use letters of credit, credit and debit cards, *electronic transaction authorizations*, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

~~(12)~~(11) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution."

Section 35. Section 72-31-229, MCA, is amended to read:

~~"72-31-229. Construction of power relating to Operation of entity or business operating transactions. In Subject to the terms of a document or an agreement governing an entity or an entity ownership interest and unless the~~

~~power of attorney otherwise provides, language in a statutory~~ power of attorney; ~~the language granting power general authority with respect to operation of an entity or business operating transactions empowers~~ authorizes the agent to:

(1) ~~to~~ operate, buy, sell, enlarge, reduce, and terminate a ~~business an ownership~~ interest;

(2) ~~to the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement, to:~~

(a)(2) perform a duty or discharge a liability and exercise *in person or by proxy* a right, power, privilege, or option that the principal has, may have, or claims to have ~~under a partnership agreement, whether or not the principal is a partner;~~

(b)(3) enforce the terms of a ~~partnership an ownership~~ agreement by ~~litigation or otherwise; and~~

(e)(4) ~~defend~~ *initiate, participate in,* submit to ~~arbitration alternative dispute resolution,~~ settle, *oppose,* or *propose or accept* a compromise with respect to litigation to which the principal is a party because of ~~membership in the partnership an ownership~~ interest;

(3)(5) ~~to~~ exercise in person or by proxy or enforce, by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a ~~bond, share, or other instrument of similar character and to defend, stocks and bonds;~~

(6) *initiate, participate in,* submit to ~~arbitration alternative dispute resolution,~~ settle, *oppose,* or *propose or accept* a compromise with respect to litigation to which the principal is a party because of a ~~bond, share, or similar instrument concerning stocks and bonds;~~

(4)(7) with respect to a ~~an entity or~~ business owned solely by the principal, ~~to:~~

(a) continue, modify, renegotiate, extend, and terminate a contract made ~~with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal by or~~ with respect to the *entity or* business before execution of the power of attorney;

(b) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) the amount and types of insurance carried; *and*

(v) the mode of engaging, compensating, and dealing with its *employees,* accountants, attorneys, ~~and or other agents and employees advisors;~~

(c) change the name or form of organization under which the *entity or* business is operated and enter into a ~~partnership an ownership~~ agreement with other persons ~~or organize a corporation~~ to take over all or part of the operation of the *entity or* business; and

(d) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the *entity or* business and control and disburse the money in the operation of the *entity or* business;

(5)(8) ~~to~~ put additional capital into a ~~an entity or~~ business in which the principal has an interest;

(6)(9) ~~to~~ join in a plan of reorganization, consolidation, *conversion,* *domestication,* or merger of the *entity or* business;

~~(7)(10) to sell or liquidate a business all or part of it at the time and upon the terms the agent considers desirable an entity or business;~~

~~(8)(11) to establish the value of a an entity or business under a buyout agreement to which the principal is a party;~~

~~(9)(12) to prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a an entity or business that are required by a governmental agency or instrumentality or that the agent considers desirable and to make related payments; and~~

~~(10)(13) to pay, compromise, or contest taxes, or assessments, fines, or penalties and to do perform any other act that the agent considers desirable to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, or assessments with respect to a an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.”~~

Section 36. Section 72-31-230, MCA, is amended to read:

~~“72-31-230. Construction of power relating to insurance transactions Insurance and annuities. In Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to insurance and annuity transactions empowers annuities authorizes the agent to:~~

~~(1) continue, pay the premium or assessment make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;~~

~~(2) procure new, different, and additional contracts of insurance and annuities for the principal and the principal’s spouse, children, and other dependents and to select the amount, type of insurance or annuity, and mode of payment;~~

~~(3) pay the premium or assessment make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;~~

~~(4) designate the beneficiary of the contract; however, an agent may be named a beneficiary of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;~~

~~(5)(4) apply for and receive a loan on the security of the secured by a contract of insurance or annuity;~~

~~(6)(5) surrender and receive the cash surrender value on a contract of insurance or annuity;~~

~~(7)(6) exercise an election;~~

~~(7) exercise investment power available under a contract of insurance or annuity;~~

~~(8) change the manner of paying premiums on a contract of insurance or annuity;~~

~~(9) change or convert the type of insurance contract or annuity, with respect to which the principal has or claims to have a power described in this section;~~

~~(10) change the beneficiary of a contract of insurance or annuity; however, the agent may not be designated a beneficiary except to the extent permitted by subsection (4);~~

~~(11)~~(10) apply for and procure government aid a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

~~(12)~~(11) collect, sell, assign, hypothecate, borrow upon against, or pledge the interest of the principal in a contract of insurance or annuity; and

~~(13)~~(12) pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.”

Section 37. Section 72-31-231, MCA, is amended to read:

“72-31-231. Construction of power relating to estate Estates, trust trusts, and other beneficiary transactions beneficial interests. (1) In this section, “estate, trust, or other beneficial interest” means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.

(2) Unless the power of attorney otherwise provides, language in ~~in~~ a statutory power of attorney, the language granting power general authority with respect to an estate, trust, and or other beneficiary transactions beneficial interest, empowers authorizes the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled as a beneficiary to a share or payment, including to:

~~(1)~~(a) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, or exchange, or consent to a reduction in or modification of a share in or payment from the fund;

~~(2)~~(b) demand or obtain, by litigation or otherwise, money or other another thing of value to which the principal is, may become, or claims to be entitled by reason of the fund, by litigation or otherwise;

~~(3)~~(c) exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

~~(4)~~(d) initiate, participate in, submit to alternative dispute resolution, settle, and oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

~~(5)~~(e) initiate, participate in, submit to alternative dispute resolution, settle, and oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

~~(6)~~(f) conserve, invest, disburse, and or use anything received for an authorized purpose; and

~~(7)~~(g) transfer an interest of the principal in real property, stocks, and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.”

Section 38. Section 72-31-232, MCA, is amended to read:

“72-31-232. Construction of power relating to claims Claims and litigation. ~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting general authority with respect to claims and litigation empowers authorizes the agent to:

(1) assert and prosecute maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, or offset, recoupment, or

~~defense, and defend against an individual, a legal entity, or government, including suits *an action* to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;~~

(2) bring an action to determine adverse claims; ~~or intervene or otherwise participate in litigation, and act as amicus curiae;~~

(3) ~~in connection with litigation, procure seek~~ an attachment, garnishment, ~~libel,~~ order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) ~~in connection with litigation, perform any lawful act, including acceptance of make or accept a tender, offer of judgment, or admission of facts, submission of submit a controversy on an agreed statement of facts, consent to examination before trial, and binding bind~~ the principal in litigation;

(5) submit to ~~arbitration~~ *alternative dispute resolution*, settle, and propose or accept a compromise ~~with respect to a claim or litigation;~~

(6) waive the issuance and service of process upon the principal; accept service of process; appear for the principal; designate persons upon ~~whom~~ *which* process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and give surety and indemnity bonds; contract and pay for the preparation and printing of records and briefs; and receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) act for the principal with respect to bankruptcy or insolvency ~~proceedings,~~ whether voluntary or involuntary, concerning the principal or some other person, ~~or with respect to a reorganization, proceeding or a receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value; and~~

(8) pay a judgment, *award, or order* against the principal or a settlement made in connection with *a claim or* litigation; and

(9) receive ~~and conserve~~ money or other thing of value paid in settlement of or as proceeds of a claim or litigation."

Section 39. Section 72-31-233, MCA, is amended to read:

"72-31-233. Construction of power relating to personal *Personal and family maintenance.* (1) ~~In~~ *Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to personal and family maintenance empowers authorizes* the agent to:

(1)(a) ~~do~~ *perform* the acts necessary to maintain the customary standard of living of the principal and the ~~principal's spouse, children, and other~~ *following* individuals, *whether living when the power of attorney is executed or later born:*

(i) *the principal's children;*

(ii) *other individuals customarily or legally entitled to be supported by the principal; and*

(iii) *the individuals whom the principal has customarily supported or indicated the intent to support;*

(b) *make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;*

(c) ~~including providing~~ *provide living quarters for the individuals described in subsection (1)(a) by:*

(i) purchase, lease, or other contract; or

(ii) paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises owned by the principal ~~and~~ *or* occupied by those individuals;

~~(2)(d)~~ *provide for the individuals described in subsection (1) normal domestic help, usual vacations and usual travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subsection (1)(a);*

~~(3)(e)~~ *pay for the individuals described in subsection (1) expenses for necessary medical, dental, and surgical health care, hospitalization, and custodial care for the individuals described in subsection (1)(a);*

~~(f)~~ *act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;*

~~(4)(g)~~ *continue any provision made by the principal for the individuals described in subsection (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subsection (1)(a);*

~~(5)(h)~~ *maintain or open charge credit and debit accounts for the convenience of the individuals described in subsection (1)(a) and open new accounts the agent considers desirable to accomplish a lawful purpose; and*

~~(6)(i)~~ *continue payments incidental to the membership or affiliation of the principal in a church religious institution, club, society, order, or other organization or continue contributions to those organizations.*

(2) Authority with respect to personal and family maintenance is neither dependent upon nor limited by authority that an agent may or may not have with respect to gifts under this part."

Section 40. Section 72-31-234, MCA, is amended to read:

~~"72-31-234. Construction of power relating to benefits from social security, medicare, medicaid, or other Benefits from governmental programs or from civil or military service. (1) In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation, including social security, medicare, and medicaid.~~

~~(2) In~~ *Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to benefits from social security, medicare, medicaid or other governmental programs or from civil or military service empowers authorizes the agent to:*

~~(1)(a)~~ *execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in 72-31-233(1)(a), and for shipment of their household effects;*

(2)(b) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(c) *enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;*

~~(3)(d) prepare, file, and prosecute~~ *maintain* a claim of the principal ~~to for~~ a benefit or assistance, financial or otherwise, to which the principal ~~claims to~~ may be entitled; *to receive* under a statute or governmental regulation;

(4)(e) ~~prosecute~~ *initiate, defend* ~~participate in,~~ submit to ~~arbitration~~ *alternative dispute resolution,* settle, ~~oppose, and~~ or propose or accept a compromise with respect to *litigation concerning any benefits* ~~benefit or assistance~~ the principal may be entitled to receive *under a statute or regulation;* and

~~(5)(f) receive the financial proceeds of a claim of the type described in this section subsection (2)(d) and conserve, invest, disburse, or use for a lawful purpose anything so received for a lawful purpose."~~

Section 41. Section 72-31-235, MCA, is amended to read:

~~"72-31-235. Construction of power relating to retirement plan transactions~~ **Retirement plans.** (1) *In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:*

(a) *an individual retirement account under section 408 of the Internal Revenue Code, 26 U.S.C. 408;*

(b) *a Roth individual retirement account under section 408A of the Internal Revenue Code, 26 U.S.C. 408A;*

(c) *a deemed individual retirement account under section 408(q) of the Internal Revenue Code, 26 U.S.C. 408(q);*

(d) *an annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);*

(e) *a pension, profit-sharing, stock bonus, or other retirement plan qualified under section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);*

(f) *a deferred compensation plan under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and*

(g) *a nonqualified deferred compensation plan under section 409A of the Internal Revenue Code, 26 U.S.C. 409A.*

(2) ~~In~~ *Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to retirement plan transactions empowers plans authorizes* the agent to:

~~(1)(a) select payment options the form and timing of payments under any a retirement plan in which the principal participates, including plans for self-employed individuals and withdraw benefits from a plan;~~

~~(2) designate beneficiaries under those plans and change existing designations;~~

~~(3) make voluntary contributions to those plans;~~

(4) ~~exercise the investment powers available under any self-directed retirement plan;~~

(5)(b) make “~~rollovers~~” a rollover, including a direct trustee-to-trustee rollover, of plan benefits into other from one retirement plans plan to another;

(c) establish a retirement plan in the principal’s name;

(d) make contributions to a retirement plan;

(e) exercise investment powers available under a retirement plan; and

(6)(f) ~~if authorized by the plan, borrow from, sell assets to, and purchase assets from the a retirement plan; and~~

(7) ~~waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.”~~

Section 42. Section 72-31-236, MCA, is amended to read:

“72-31-236. Construction of power relating to tax matters Taxes. In Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to tax matters empowers taxes authorizes the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, *property*, Federal Insurance Contributions Act, and other tax returns; claims for refunds; requests for extension of time; petitions regarding tax matters; and any other tax-related documents, including receipts, offers, waivers, consents, (including consents and agreements under *section 2032A of the Internal Revenue Code, 26 U.S.C. 2032A* ~~section 2032A or any successor section~~), closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service and any or other taxing authority.”

Section 43. Gifts. (1) In this section, a gift “for the benefit of” a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act, Title 72, chapter 26, and a tuition savings account or prepaid tuition plan under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(a) make outright to or for the benefit of a person, a gift of any of the principal’s property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503(b) of the Internal Revenue Code, 26 U.S.C. 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or if the principal’s spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) consent, pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, to the splitting of a gift made by the principal’s spouse in an amount

per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(3) An agent may make a gift of the principal’s property only as the agent determines is consistent with the principal’s objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal’s best interest based on all relevant factors, including:

- (a) the value and nature of the principal’s property;
- (b) the principal’s foreseeable obligations and need for maintenance;
- (c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (d) eligibility for a benefit, a program, or assistance under a statute or regulation; and
- (e) the principal’s personal history of making or joining in making gifts.

Section 44. Statutory form power of attorney. A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this part.

MONTANA STATUTORY FORM POWER OF ATTORNEY
IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent’s authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I

(Name of Principal)

name the following person as my agent:

Name of Agent:

Agent’s Address:.....

Agent's Telephone Number:.....

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:.....

Successor Agent's Address:.....

Successor Agent's Telephone Number:.....

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:.....

Second Successor Agent's Address:.....

Second Successor Agent's Telephone Number:.....

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- (...) Real Property
- (...) Tangible Personal Property
- (...) Stocks and Bonds
- (...) Commodities and Options
- (...) Banks and Other Financial Institutions
- (...) Operation of Entity or Business
- (...) Insurance and Annuities
- (...) Estates, Trusts, and Other Beneficial Interests
- (...) Claims and Litigation
- (...) Personal and Family Maintenance
- (...) Benefits from Governmental Programs or Civil or Military Service
- (...) Retirement Plans
- (...) Taxes
- (...) All Preceding Subjects

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

.....
.....

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator or guardian of my estate:

.....

Nominee's Address:.....

Nominee's Telephone Number:.....

Name of Nominee for guardian of my person:

Nominee's Address:

Nominee's Telephone Number:

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

.....

Your Signature

.....

Date

.....

Your Name Printed

.....

Your Address

.....

Your Telephone Number

State of

[County] of.....

This document was acknowledged before me on

.....,

(Date)

by.....

(Name of Principal)

..... (Seal, if any)

Signature of Notary

My commission expires:.....

This document prepared by:

.....

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney; and

(4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as “agent” in the following manner:

(Principal’s Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) act loyally for the principal’s benefit;

(2) avoid conflicts that would impair your ability to act in the principal’s best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal’s expectations, to act in the principal’s best interest; and

(6) attempt to preserve the principal’s estate plan if you know the plan and preserving the plan is consistent with the principal’s best interest.

Termination of Agent’s Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) death of the principal;

(2) the principal’s revocation of the power of attorney or your authority;

(3) the occurrence of a termination event stated in the power of attorney;

(4) the purpose of the power of attorney is fully accomplished; or

(5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2. If you violate the Uniform Power of Attorney Act, Title 72, chapter 31, part 2, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

Section 45. Agent’s certification. The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT’S AUTHORITY

State of

County of.....

I, (Name of Agent), certify under penalty of perjury that(Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated

I further certify that to my knowledge:

(1) the principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;

(2) if the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4)

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

.....
Agent's Signature Date

.....
Agent's Name Printed

.....
Agent's Address

.....
Agent's Telephone Number

This document was acknowledged before me on,
(Date)

by.....
(Name of Agent)

..... (Seal, if any)

Signature of Notary

My commission expires:

This document prepared by:
.....

Section 46. Section 72-31-238, MCA, is amended to read:

“72-31-238. Uniformity of application and construction. ~~This part~~ *In applying and construing this uniform act, consideration must be applied and construed to effectuate its general purpose to make uniform the given to the need to promote uniformity of the law with respect to the its subject of this part matter among the states enacting that enact it.”*

Section 47. Relation to electronic signatures in global commerce act. This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 48. Effect on existing powers of attorney. Except as otherwise provided in [this act], on [the effective date of this act]:

(1) [this act] applies to a power of attorney created before, on, or after [the effective date of this act] unless it is a health care power of attorney;

(2) [this act] applies to a judicial proceeding concerning a power of attorney commenced on or after [the effective date of this act] unless it is a health care power of attorney;

(3) [this act] applies to a judicial proceeding concerning a power of attorney commenced before [the effective date of this act] unless the court finds that application of a provision of [this act] would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) an act done before [the effective date of this act] is not affected by [this act].

Section 49. Repealer. The following sections of the Montana Code Annotated are repealed:

72-31-201. Statutory form of power of attorney.

72-31-237. Existing interests — foreign interests.

Section 50. Codification instruction. (1) [Sections 1 through 24, 43 through 45, and 47] are intended to be codified as an integral part of Title 72, chapter 31, part 2, and the provisions of Title 72, chapter 31, part 2, apply to [sections 1 through 24, 43 through 45, and 47].

Approved April 1, 2011

CHAPTER NO. 110

[HB 428]

AN ACT REVISING BUSINESS FILING WITH THE SECRETARY OF STATE; ALLOWING A PERSON DOING BUSINESS IN MONTANA TO CONTEST THE REGISTRATION OF AN ASSUMED BUSINESS NAME; MODIFYING THE EXISTING CONTEST OF REGISTRATION OF NAME PROCESS; ALLOWING THE SECRETARY OF STATE TO ASSESS CERTAIN FEES AND COSTS TO THE LOSING PARTY WHEN AN ASSUMED BUSINESS NAME IS CONTESTED; PROVIDING A PENALTY; AMENDING SECTIONS 30-13-202 AND 35-1-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 30-13-202, MCA, is amended to read:

“30-13-202. Registration of assumed business name — when prohibited — contest procedure. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) *A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in 35-1-310.”*

Section 2. Section 35-1-310, MCA, is amended to read:

“35-1-310. Contest of registration of name — penalty. (1) A person doing business in this state may contest the subsequent registration of a name under this section with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of

the notice of contest to the person who ~~subsequently~~ registered the contested name. The notice to the secretary of state must be accompanied by a \$100 deposit, which the secretary of state shall award to the prevailing party in the contest.

(2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest. If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the Montana Administrative Procedure Act apply.

(3) The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

- (a) the strength or unique nature of the names;
- (b) the similarity of sound, appearance, or meaning of the names;
- (c) the intent of the parties;
- (d) the type of businesses engaged in or to be engaged in by the parties;
- (e) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;
- (f) the nature and quality of goods or services provided by the parties;
- (g) the level of sophistication of potential purchasers of goods or services offered by the parties;
- (h) *the length of time the parties have been transacting business under the name or names in question;*
- ~~(h)~~(i) whether the party contesting the ~~subsequent~~ registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and
- ~~(i)~~(j) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

(4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and may order that the contested name be changed in the records of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

(5) *The secretary of state may order that the losing party pay any attorney fees and costs incurred by the prevailing party to contest the name or by the secretary of state to administer the provisions of this section, including any hearings.*

~~(5)~~(6) A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

(7) (a) *A person who registers an assumed business name under 30-13-202 with the intent to deceive or harass another person doing legitimate business under the laws of this state is subject to a penalty of \$1,000 in a civil action brought by a county attorney in the district court with jurisdiction for the county.*

(b) *A penalty collected pursuant to subsection (7)(a) must be deposited in the county general fund.”*

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

Approved April 1, 2011

CHAPTER NO. 111

[HB 484]

AN ACT CLARIFYING THAT THE PROVISION OF ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS IS BASED ON ANNUAL VERIFICATION OF ADDRESSES AND IS NOT PERMANENT; AMENDING SECTIONS 13-13-212 AND 13-21-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-13-212, MCA, is amended to read:

“13-13-212. Application for absentee ballot — special provisions — annual absentee ballot list. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant’s birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant’s county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector’s place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as

the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall *annually* mail a forwardable address confirmation form ~~in January of each year~~ to each elector who has requested an absentee ballot for subsequent elections. *The address confirmation form must be mailed in January.* The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the ~~register of electors who have requested an absentee ballot for each subsequent election~~ *annual absentee ballot list*.

(c) An elector who has been removed from the ~~register~~ *annual absentee ballot list* may subsequently request to be mailed an absentee ballot for each subsequent election.”

Section 2. Section 13-21-210, MCA, is amended to read:

“13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector’s birth date and signature; or

(ii) by properly completing, signing, and returning to the election administrator the federal post card application.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector ~~will~~ *must* be removed from the ~~permanent~~ *annual* absentee ballot list. An elector who is removed from the ~~permanent~~ *annual* absentee ballot list will continue to receive absentee ballots during the period covered in the elector’s initial application under this section.

(5) The elector’s county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed.”

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

Approved April 1, 2011

CHAPTER NO. 112

[HB 497]

AN ACT REMOVING THE PROHIBITION ON PERMITS TO APPROPRIATE AND CONSUME MORE THAN 4,000 ACRE-FEET OF WATER ANNUALLY; AND AMENDING SECTION 85-2-301, MCA.

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

Section 1. Section 85-2-301, MCA, is amended to read:

“85-2-301. Right to appropriate — recognition and confirmation of permits issued after July 1, 1973. (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may appropriate water only for a beneficial use.

(2) (a) Only the department may appropriate water by permit ~~in either of the following instances:~~

(i) ~~for transport outside the following river basins:~~

~~(A)(i)~~ the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

~~(B)(ii)~~ the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

~~(C)(iii)~~ the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

~~(D)(iv)~~ the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

~~(E)(v)~~ the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

~~(F)(vi)~~ the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota. ~~;~~ ~~or~~

(ii) ~~whenever water in excess of 4,000 acre-feet a year and 5.5 cubic feet per second, for any use, is to be consumed.~~

(b) ~~Water for these purposes or in these amounts may be leased from the department by any person. The department may lease water subject to this subsection (2) under the provisions of 85-2-141.~~

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

(4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a permit by the department.”

Approved April 1, 2011

CHAPTER NO. 113

[HB 536]

AN ACT REPEALING THE REQUIREMENT THAT A GRIZZLY BEAR OR THE PARTS OF A GRIZZLY BEAR BE REGISTERED WITH THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS BEFORE THEY MAY BE SOLD IN ACCORDANCE WITH FEDERAL LAW; AMENDING SECTIONS 87-3-111 AND 87-3-118, MCA; REPEALING SECTION 87-3-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-3-111, MCA, is amended to read:

“87-3-111. Unlawful possession, shipping, or transportation of game fish, birds, game animals, or fur-bearing animals — exceptions — penalties. (1) It is unlawful for a person to possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit:

(a) the possession, shipping, or transportation of hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided ~~in 87-3-110~~ *by federal law*;

(b) the possession, shipping, or transportation of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the possession, shipping, or transportation of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) the possession, shipping, or transportation of paddlefish roe as caviar under the provisions of 87-4-601; or

(e) the possession, shipping, or transportation of captive-reared migratory waterfowl.

(3) It is unlawful for a person to possess, ship, or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the same are found killed, captured, or took the game fish, bird, game animal, or fur-bearing animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in 87-1-111 and 87-1-115. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) (a) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then the person is subject to the penalties in 87-1-102.

(b) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof

exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person who is convicted under this section or who forfeits bond or bail after being charged with a violation of this section shall lose all hunting, fishing, and trapping licenses and permits and license privileges for a minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the person of the loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, to the department within 10 days of notification by the department.”

Section 2. Section 87-3-118, MCA, is amended to read:

“87-3-118. Unlawful sale of game fish, birds, game animals, or fur-bearing animals — penalty. (1) A person commits the offense of unlawful sale of a game fish, bird, game animal, or fur-bearing animal if the person purposely or knowingly sells, purchases, or exchanges all or part of any game fish, bird, game animal, or fur-bearing animal.

(2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from the schedules of restitution values set out in 87-1-111 and 87-1-115. The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(3) This section does not prohibit:

(a) the sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in ~~87-3-110~~ by federal law;

(b) the sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) the donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-601; or

(e) the sale, purchase, or exchange of captive-reared migratory waterfowl.

(4) (a) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then the person shall be fined an amount 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.

(b) In addition to the penalties in subsection (4)(a), the person, upon conviction or forfeiture of bond or bail, may lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a period set by the court. The department shall notify the person of any loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification by the department.

(5) (a) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof

exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state prison for not more than 5 years, or both.

(b) In addition to the penalties in subsection (5)(a), the person, upon conviction or forfeiture of bond or bail, shall lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the person of the loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification by the department.”

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

87-3-110. Registration for sale of certain grizzly bears.

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

Approved April 1, 2011

CHAPTER NO. 114

[HB 573]

AN ACT INCLUDING WITHIN THE INSURANCE COMMISSIONER'S DUTIES A REQUIREMENT TO STUDY CREATION OF A STATEWIDE ALL-PAYER, ALL-CLAIMS DATABASE FOR HEALTH CARE; REQUIRING USE OF AN ADVISORY COUNCIL; ESTABLISHING REPORTING REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, comprehensive data about the quality and cost of health care allows state policymakers to monitor the success and efficiency of efforts to reduce health care costs and improve both health care quality and population health; and

WHEREAS, comprehensive health care data can show statewide variation in care, including whether evidence-based guidelines and best-practice clinical standards are being followed and how they affect cost and quality; and

WHEREAS, access to comparative data can help businesses to learn where they stand when compared with their peers with respect to the cost and covered services of health insurance policies; and

WHEREAS, comparative data provides consumers with information that they and their health care providers can use to make informed decisions about the effectiveness of treatments and the quality of care; and

WHEREAS, comparative data supports providers' efforts to design targeted quality improvement initiatives and to compare their own performance with that of their peers; and

WHEREAS, comprehensive health care data helps health care policymakers evaluate reform efforts and identify communities that provide cost-effective care so that successful initiatives can be identified and replicated; and

WHEREAS, other states have learned of the value of all-payer, all-claims health care databases and have implemented them to the benefit of their citizens while protecting the privacy rights of all individuals.

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

Section 1. Review of health care insurance — advisory council. (1) The insurance commissioner shall convene an advisory council to review the costs, benefits, and procedural and technical requirements necessary to design,

implement, and maintain a statewide all-payer, all-claims database for health care. The commissioner shall investigate, as provided in 33-1-311 within available funding, the following insurance matters related to health care:

(a) specific strategies to measure and collect data related to health care safety and quality, utilization, health outcomes, and cost;

(b) data elements that foster quality improvements and peer group comparisons;

(c) usable and comparable information that allows public and private health care purchasers, consumers, and data analysts to identify and compare health plans, health insurers, health care facilities, and health care providers regarding the provision of safe, cost-effective, high-quality health care services;

(d) existing health care databases that may provide standards or methods useful in establishing or maintaining a database in a cost-effective and efficient manner;

(e) elements necessary to measure safety, timeliness, effectiveness, efficiency, equity, privacy, and patient-centered approaches;

(f) data regarding claims, eligibility requirements, and other publicly available data that may be used to minimize the cost and administrative burden of collecting data; and

(g) any other health care information that the commissioner or the advisory council considers relevant to creation of a statewide all-payer, all-claims database for health care.

(2) The insurance commissioner shall report by August 1, 2012, to the children, families, health, and human services interim committee on the results of the advisory council's review and any recommendations for action by the 63rd legislature.

Section 2. Effective date. [This act] is effective July 1, 2011.

Section 3. Termination. [This act] terminates December 31, 2012.

Approved April 1, 2011

CHAPTER NO. 115

[SB 7]

AN ACT REQUIRING ELECTRICAL GENERATION FACILITIES AND UTILITIES IN MONTANA THAT BUY OR SELL RENEWABLE ENERGY CREDITS TO FILE RENEWABLE ENERGY CREDIT REPORTS WITH THE DEPARTMENT OF REVENUE AND THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO REVIEW THE REPORT; PROVIDING EXCEPTIONS TO THE REPORTS' CONTENTS; PROVIDING A PENALTY FOR NOT FILING A RENEWABLE ENERGY CREDIT REPORT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, a growing number of states have adopted renewable portfolio standards requiring electricity retailers to acquire a minimum percentage of their power from renewable energy resources, and renewable energy credits are used to meet those acquisition targets; and

WHEREAS, the environmental attributes of a renewable power source reside in an unbundled renewable energy credit and associated electrons are considered generic electricity in power markets and priced accordingly; and

WHEREAS, there are no central clearinghouses and no futures market for renewable energy credits, and contracts for large volumes of renewable energy credits often contain confidentiality clauses that prohibit price disclosure for the term of the contract; and

WHEREAS, unbundled renewable energy credits sent to certain markets could depress the value of the associated electrons that remain in the region, and regional utilities could face higher costs for integrating renewable power constructed to meet certain states' increased demand for renewable energy credits; and

WHEREAS, it is in the public interest to disclose the price of renewable energy credits because it provides credibility and transparency to state-legislated policies such as renewable portfolio standards.

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

Section 1. Electrical generation facilities renewable energy credit reporting. (1) (a) Except as provided in [section 2], a utility as defined in 69-5-102 operating in Montana, a competitive electricity supplier as defined in 69-3-2003, and any owner of an electrical generation facility operating in Montana that buys or sells renewable energy credits shall annually file a renewable energy credit report in accordance with this section.

(b) The report must be filed by March 1 of the year following the purchase or sale of the renewable energy credit.

(2) Except as provided in [section 2], the report must include:

(a) the price of any renewable energy credit bought or sold by the facility or utility; and

(b) whether electrical energy and renewable energy credits were bought or sold together or separately, as a bundled or unbundled product.

(3) Except as provided in subsection (4), the reports are not subject to the regulatory powers of the department of revenue. The department of revenue shall make the report available for public inspection.

(4) A utility or owner of an electrical generation facility that fails to file the report required pursuant to this section shall pay an administrative penalty, assessed by the department of revenue, of \$1,500. A utility may not recover this penalty through an increase in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

(5) For the purposes of implementing this section, "electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power.

(6) (a) The report required in subsection (1) must be filed with the department of revenue in a format determined by the department.

(b) A utility, a competitive electricity supplier, or an owner of an electrical generation facility that is required to file a report pursuant to subsection (1) shall provide a copy of the report to the energy and telecommunications interim committee provided for in 5-5-230. Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall review the reports and, if necessary, submit recommendations regarding the use of renewable energy credits in Montana to the legislature.

Section 2. Exceptions to report contents. (1) If a utility, a competitive electricity supplier, or an owner of an electrical generation facility operating in

Montana required to file the report pursuant to [section 1] buys or sells a renewable energy credit in a market where the price of a renewable energy credit is not publicly disclosed, the utility, competitive electricity supplier, or owner of an electrical generation facility operating in Montana is not required to disclose the price.

(2) The utility, competitive electricity supplier, or owner of an electrical generation facility operating in Montana shall report the number of credits bought or sold and whether the energy and renewable energy credits were bought or sold together or separately as a bundled or unbundled product.

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 69, chapter 3, part 20, and the provisions of Title 69, chapter 3, part 20, apply to [sections 1 and 2].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

Section 7. Applicability. [This act] applies to renewable energy credits bought or sold on or after January 1, 2012.

Approved April 1, 2011

CHAPTER NO. 116

[SB 12]

AN ACT REPEALING AN OBSOLETE BUSINESS EQUIPMENT PROPERTY TAX REIMBURSEMENT TO LOCAL GOVERNMENT TAXING JURISDICTIONS; REPEALING SECTION 15-1-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. The following section of the Montana Code Annotated is repealed:

15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions.

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

Approved April 1, 2011

CHAPTER NO. 117

[SB 49]

AN ACT REVISING THE SIZE OF TRAILER LICENSE PLATES; ESTABLISHING THE SIZE OF MOTORCYCLE AND QUADRICYCLE LICENSE PLATES; DESIGNATING SMALL LICENSE PLATES AS THE DEFAULT SIZE FOR A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS; ALLOWING A PERSON REGISTERING A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS TO CHOOSE LARGE LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 61-3-332, MCA, is amended to read:

“61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word “permanent” on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under ~~61-3-332~~ *this section*, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until January 1, 2015, and upon payment of the fee required in 61-3-321(12)(b), a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect

at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) (a) For ~~trailers~~ *semitrailers, travel trailers, pole trailers, trailers with a declared weight of 6,000 pounds or more*, and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(b) *For motorcycles and quadricycles, plates must be of metal 4 inches wide and 7 inches in length.*

(c) *The department shall issue plates that are 4 inches wide and 7 inches in length for trailers with a declared weight of less than 6,000 pounds unless a person registering a trailer with a declared weight of less than 6,000 pounds requests plates that are 6 inches wide and 12 inches in length. A person registering a trailer shall pay all applicable fees for the plates chosen.*

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor

vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.”

Section 2. Effective date. [This act] is effective January 1, 2012.

Approved April 1, 2011

CHAPTER NO. 118

[SB 92]

AN ACT ALLOWING NONRESIDENTS TO CAPTURE RAPTORS FOR FALCONRY OR CAPTIVE BREEDING PURPOSES; AND AMENDING SECTION 87-5-208, MCA.

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

Section 1. Section 87-5-208, MCA, is amended to read:

“87-5-208. Nonresidents allowed raptors in state — capture. ~~(1)~~(1) A nonresident who possesses a valid federal falconry license may practice falconry in the state of Montana with legally acquired and permitted raptors. A nonresident is allowed to hunt with falcons in the state of Montana subject to all Montana laws and rules.

~~(2) A nonresident is not allowed to capture raptors from the wild in the state of Montana for falconry or captive breeding purposes.~~

(2) *Nonresidents may capture raptors in Montana for falconry or captive breeding purposes pursuant to rules adopted under 87-5-204.*

(3) *A resident of a state that does not allow Montana residents to trap raptors in that state may not obtain a trapping permit in Montana.”*

Approved April 1, 2011

CHAPTER NO. 119

[SB 189]

AN ACT ALLOWING PHARMACISTS TO ADMINISTER THE INFLUENZA VACCINE TO INDIVIDUALS WHO ARE 12 YEARS OF AGE OR OLDER; AND AMENDING SECTION 37-7-101, MCA.

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

Section 1. Section 37-7-101, MCA, is amended to read:

“37-7-101. Definitions. As used in this chapter, the following definitions apply:

(1) (a) “Administer” means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) ~~The~~ *Except as provided in [section 2],* the term does not include immunization by injection for children under 18 years of age.

(2) “Board” means the board of pharmacy provided for in 2-15-1733.

(3) “Cancer drug” means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

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

(12) "Device" has the same meaning as defined in 37-2-101.

(13) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(14) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

(15) "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection (15)(a), (15)(b), or (15)(c).

(16) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper

utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

- (a) known allergies;
- (b) rational therapy contraindications;
- (c) reasonable dose and route administration;
- (d) reasonable directions for use;
- (e) drug-drug interactions;
- (f) drug-food interactions;
- (g) drug-disease interactions; and
- (h) adverse drug reactions.

(17) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(18) "Health care facility" has the meaning provided in 50-5-101.

(19) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

(20) "Hospital" has the meaning provided in 50-5-101.

(21) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(22) "Long-term care facility" has the meaning provided in 50-5-101.

(23) (a) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(24) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(25) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

(26) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(27) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(28) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

(29) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph."

(30) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(31) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(32) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(33) "Practice of pharmacy" means:

- (a) interpreting, evaluating, and implementing prescriber orders;
- (b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;
- (c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;
- (d) monitoring drug therapy and use;
- (e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;
- (f) participating in quality assurance and performance improvement activities;
- (g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and
- (h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(34) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(35) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(36) "Prescriber" has the same meaning as provided in 37-7-502.

(37) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 353.

(38) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(39) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(40) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(41) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(42) "Wholesale" means a sale for the purpose of resale."

Section 2. Administration of influenza vaccine. A pharmacist may administer immunization against the influenza virus by injection or inhalation for individuals who are 12 years of age or older.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 37, chapter 7, part 1, and the provisions of Title 37, chapter 7, apply to [section 2].

Approved April 1, 2011

CHAPTER NO. 120

[SB 205]

AN ACT PROHIBITING A UTILITY FROM PROVIDING ELECTRICITY SUPPLY SERVICE IN ANOTHER UTILITY'S SERVICE TERRITORY; AMENDING SECTIONS 69-5-102 AND 69-8-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Supply service prohibited. Except as provided in 69-5-104, a utility may not provide electricity supply service to premises in another utility's service territory. An electricity supplier may provide electricity supply service in the service territory of a public utility as provided in 69-8-411.

Section 2. Section 69-5-102, MCA, is amended to read:

"69-5-102. Definitions. When used in this part, the following definitions apply:

(1) "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Cost" means the gross cost of constructing new electric service facilities to the premises, using new materials and similar design standards required to meet the load, from a point where there is existing electrical capacity to serve.

(3) "*Distribution facilities*" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer that are controlled or operated by a distribution utility.

(4) "*Distribution service*" means the function of delivering electricity to the public by a distribution utility.

(5) "*Distribution utility*" means a utility owning distribution facilities for distribution of electricity to the public.

(3)(6) "Electric facilities provider" means any utility that provides electric service facilities to the public.

(4)(7) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

(8) "*Electricity supplier*" means any person, corporation, or governmental entity that:

(a) sells electricity to customers at retail rates in the state; and

(b) is not a public utility or a cooperative.

(9) "*Electricity supply service*" means the provision of electricity supply and related services through power purchase agreements, the acquisition and operation of electrical generation facilities, demand side management, and energy efficiency programs.

(5)(10) "Large customer" means any premises, except subdivisions, with the estimated connected load for full operation at an individual service for the premises of 500 kilowatts or larger.

(6)(11) "Line" means any material that is used to convey electrical energy and that is normally energized between 2,400 volts phase to ground and 14,400 volts phase to ground.

(7)(12) "Premises" means a building, residence, structure, irrigation pump, or facility to which electric service facilities are provided or are to be installed. However, two or more buildings, structures, irrigation pumps, or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, irrigation pump, or facility, other than a trailer court, may not, together with any other building, structure, irrigation pump, or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, irrigation pump, or facility.

(8)(13) "Regulated utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(14) "*Service territory*" means premises receiving distribution service from a utility on January 1, 2011, and premises added pursuant to Title 69, chapter 5.

~~(9)~~(15) "Subdivision" has the meaning provided for in 76-3-103. The definition includes subdivisions that may be developed in one or more phases of development at different periods of time.

~~(10)~~(16) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18, or their successors or assignees.

~~(11)~~(17) "Vector" means a straight line between two points."

Section 3. Section 69-8-411, MCA, is amended to read:

"69-8-411. Nondiscriminatory access. (1) Nonutility generators and electricity suppliers must have open, fair, and nondiscriminatory access to a public utility's transmission and distribution facilities according to federal energy regulatory commission rules and regulations for purposes of serving those customers identified in 69-8-201(1) and (2).

(2) ~~Public~~ *Except as provided in [section 1], public* utilities shall grant the retail customers identified in 69-8-201(1) and (2) and their electricity suppliers access to transmission and distribution facilities at rates and under terms and conditions comparable to the public utility's own access to those facilities or access by the public utility's affiliates.

(3) Public utilities shall file tariffs for transmission and distribution services regulated by the federal energy regulatory commission and the commission implementing subsections (1) and (2)."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the provisions of Title 69, chapter 5, part 1, apply to [section 1].

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

Approved April 1, 2011

CHAPTER NO. 121

[SB 361]

AN ACT GENERALLY REVISING GAMBLING LAWS; ALLOWING VIDEO LINE GAMES IN LICENSED ESTABLISHMENTS; PROVIDING CONDITIONS FOR OPERATION OF VIDEO LINE GAMES; PROHIBITING ADVERTISING OR PROMOTION OF GAMES NOT SPECIFICALLY AUTHORIZED; PROHIBITING MANUFACTURERS FROM CHARGING CERTAIN GAME FEES ON A DAILY OR PERIODIC BASIS; AMENDING SECTIONS 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-611, AND 23-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 23-5-602, MCA, is amended to read:

"23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "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) (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.

(3) (a) "Bonus game" means a game other than a bingo, poker, ~~or~~ keno, or video line game that is offered as a prize for playing and achieving a ~~win defined outcome~~ by playing a bingo, poker, ~~or~~ 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 ~~poker, a bingo, poker, or 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, ~~or~~ 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.

(4) "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.

(5) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

(6) (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.

(7) "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.

(8) "*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.

~~(8)~~(9) "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.

~~(9)~~(10) (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.

(11) (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 23-5-603, MCA, is amended to read:

“23-5-603. Video gambling machines — possession — play — restriction. (1) A licensed operator may make available for public play only the number of approved video gambling machines specifically authorized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, *poker*, keno, ~~and draw poker~~, *video line*, and *multigame video gambling machines*. Only the number of approved machines for which permits have been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) *A video line game approved by the department for play must be made available to any licensed machine owner.*

(4) *A manufacturer may not charge a fee for the use of a bingo, poker, keno, video line, or multigame video gambling machine on a daily basis or any other periodic basis.*

(5) *A licensed operator, distributor, route operator, or manufacturer is prohibited from referencing games not authorized under this title in advertising, promoting, or inducing play of a video gambling machine. The department shall further define by rule what advertising is allowed under this subsection.*

(3)(6) Machines on premises appropriately licensed to sell alcoholic beverages for on-premises consumption, as provided in 23-5-119, must be placed:

(a) in a room, area, or other part of the premises in which alcoholic beverages are sold or consumed; and

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age.”

Section 3. Section 23-5-607, MCA, is amended to read:

“23-5-607. Expected payback — verification. (1) The department shall prescribe the expected payback value of ~~one~~ credit awarded to be at least 80% of the value of ~~one~~ credit played for each bingo, poker, keno, and video line game in a video gambling machine. The credit ratio may not be greater than 92% for each video line game.

(2) Each video gambling machine must have an electronic accounting device that the department may use to verify the winning percentage.”

Section 4. Section 23-5-608, MCA, is amended to read:

“23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash. (1) A video gambling machine may not allow more than \$2 to be played on a game or award free games or credits in excess of the following amounts:

- (a) ~~\$800 a game for a video draw poker machine; and~~
- (b) ~~\$800 a game for a video keno or bingo machine.~~

(2) A licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher.”

Section 5. Section 23-5-611, MCA, is amended to read:

“23-5-611. Machine permit qualifications — limitations. (1) (a) A person who has been granted an operator’s license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises as provided in 23-5-119 may be granted a permit for the placement of video gambling machines on the person’s premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator’s license for the premises under 23-5-177, a permit for the same number of ~~video keno, bingo, or combination poker-keno-bingo~~ *multigame* gambling machines as were operated on the premises on that date may be granted to the person who held the permit for ~~such~~ *that number of* machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator’s license under 23-5-177 may be granted a permit for the placement of ~~video bingo, poker, keno, bingo, video line, or combination poker-keno-bingo~~ *multigame video* gambling machines on the person’s premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination.”

Section 6. Section 23-5-621, MCA, is amended to read:

“23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part, including a description of the images and the minimum area of a screen that depicts a bingo, poker, ~~or~~ keno, *or video line* game;

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine to offer any combination of approved *bingo, poker, keno, and bingo and video line* games within the same video gambling machine cabinet if the owner of the video gambling machine has received approval to report video gambling machine information ~~utilizing~~ *using* an approved automated accounting and reporting system or has entered into an agreement with the department to ~~utilize~~ *use* an approved automated accounting and reporting system;

(e) allow, on an individual license basis, licensed machine owners and operators of machines that ~~utilize~~ *use* an approved automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected for business management, accounting, and payroll purposes; ~~however,~~ *However*, the rules must specify that the data made available as a result of an approved automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

(f) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that ~~utilize~~ *use* an approved automated accounting and reporting system.

(2) The department's rules for an approved automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the approved automated accounting and reporting system within the limits prescribed by 23-5-115(8) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the approved automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department;

(d) describe specifications and a review and testing process for approved automated accounting and reporting systems to be ~~utilized~~ *used* by licensed operators, including the requirements for electronically captured data; and

(e) prescribe the frequency of reporting from an approved automated accounting and reporting system and provide exceptions for geographically isolated video gambling operators."

Section 7. Effective date. [This act] is effective on passage and approval and applies to the operation of video line games on or after January 1, 2012.

Approved April 1, 2011

CHAPTER NO. 122

[HB 25]

AN ACT EXPANDING AND REVISING LAWS RELATED TO CERTAIN LICENSING BOARDS' MEDICAL ASSISTANCE PROGRAMS; REQUIRING PERIODIC AUDITS OF THE PROGRAMS; APPLYING CONFIDENTIALITY PROVISIONS TO THE PROGRAMS; REQUIRING BOARD ACTION ON CERTAIN PROGRAM VIOLATIONS; REQUIRING MEDICAL ASSISTANCE PROGRAMS FOR THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF PHARMACY; AMENDING SECTIONS 37-1-131, 37-3-203, 37-3-401, 37-4-311, 37-7-201, AND 37-8-202, MCA; AND REPEALING SECTION 37-3-208, MCA.

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

Section 1. Assistance program audits. (1) In each 10-year period, the medical assistance programs provided for in chapters 3, 4, 7, and 8 must be audited for performance objectives as determined by each licensing board in chapters 3, 4, 7, and 8 at least twice, as provided in subsections (2) and (3).

(2) Licensing boards in chapters 3, 4, 7, and 8 shall jointly contract and pay for an external audit of the relevant assistance program once every 5 years. The department shall assess the costs to each licensing board in chapters 3, 4, 7, and 8 for the external audit over a corresponding period.

(3) The department shall arrange for an internal audit midway through the subsequent 5-year period and shall assess costs to the licensing boards in chapters 3, 4, 7, and 8 for the internal audit, budgeting over the corresponding period.

Section 2. Confidentiality of medical assistance program information — health care information. (1) The proceedings and records of a medical assistance program created in chapter 3, 4, 7, or 8 relating to a licensee who has received or is receiving assistance from the medical assistance program:

(a) are confidential and are considered to be proceedings and records of a professional standards review committee under 37-2-201; and

(b) are not subject to discovery or introduction into evidence in any administrative or judicial proceeding other than a disciplinary proceeding against the licensee before the applicable licensing board. If the proceedings and records are introduced into evidence in a disciplinary proceeding, the introduced materials are public unless otherwise protected by law.

(2) Any health care information, as defined in 50-16-803, that is maintained by a health care provider in the provision of health care services to a licensee participating in a medical assistance program provided for in chapter 3, 4, 7, or 8 is subject to discovery from the licensee or the health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

Section 3. Section 37-1-131, MCA, is amended to read:

“37-1-131. Duties of boards — quorum required. (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board’s jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board’s jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers’ compensation system in violation of the provisions of Title 39, chapter 71;

(d) *take disciplinary action against the license of a person in a medical assistance program under chapter 3, 4, 7, or 8 if, in the period under contract, the licensee has on three separate occasions returned to the use of a prohibited or proscribed substance. The requirements of this subsection (1)(d) may not be construed as affecting the rights of an employer to evaluate, discipline, or discharge an employee.*

(~~d~~)*(e)* pay to the department the board’s pro rata share of the assessed costs of the department under 37-1-101(6);

(~~e~~)*(f)* consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the

proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

Section 4. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. (1) The board may:

(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

~~(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;~~

(e)(d) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

~~(f)~~(e) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

~~(2) If the board establishes a program pursuant to subsection (1)(d), the~~ (a) *The board shall establish a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.*

(b) *The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.*

Section 5. Section 37-3-401, MCA, is amended to read:

“37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

- (a) medically incompetent;
- (b) mentally or physically unable to safely engage in the practice of medicine; or
- (c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the *medical assistance* program established by the board under ~~37-3-203(1)(d)~~ 37-3-203, in lieu of reporting directly to the board.

(b) The *medical assistance* program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

- (i) the licensee fails or refuses to:
 - (A) comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;
 - ~~(ii)(B) the licensee fails or refuses to~~ (ii) undergo a reasonable course of recommended treatment that they recommend, including reasonable aftercare;
 - ~~(iii)(C) the licensee fails or refuses to~~ (iii) satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;
 - ~~(iv)~~(ii) the licensee’s condition creates a risk of harm to the licensee, a patient, or others; or

~~(v)~~(iii) *they the medical assistance program personnel* are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.”

Section 6. Section 37-4-311, MCA, is amended to read:

“37-4-311. Rehabilitation. The board shall establish a ~~protocol for the referral to a board-approved~~ rehabilitation or *medical assistance* program for to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.”

Section 7. Section 37-7-201, MCA, is amended to read:

“37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.

(2) The board shall regulate the practice of pharmacy in this state, including but not limited to:

(a) establishing minimum standards for:

(i) equipment necessary in and for a pharmacy;

(ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;

(iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

(iv) monitoring drug therapy; and

(v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;

(b) requesting the department to inspect, at reasonable times:

(i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and

(ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(c) regulating:

(i) the training, qualifications, employment, licensure, and practice of interns;

(ii) the training, qualifications, employment, and registration of pharmacy technicians; and

(iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;

(d) examining applicants and issuing and renewing licenses of:

(i) applicants whom the board considers qualified under this chapter to practice pharmacy;

(ii) pharmacies and certain stores under this chapter;

(iii) wholesale drug distributors; and

(iv) persons engaged in the manufacture and distribution of drugs or devices;

(e) in concurrence with the board of medical examiners, defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;

(f) issuing certificates of “certified pharmacy” under this chapter;

(g) establishing and collecting license and registration fees;

(h) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection (2)(h) may not be construed to expand on the definition of the practice of pharmacy.

(i) establishing a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.

~~(j)~~(j) making rules for the conduct of its business;

~~(k)~~(k) performing other duties and exercising other powers as this chapter requires;

~~(l)~~(l) adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; and

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.

(3) The board may:

(a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and

(b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care.”

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

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

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) establish a *medical assistance* program to assist licensed nurses who are found to be *physically or mentally* impaired by ~~mental illness~~, habitual intemperance, or the excessive use of ~~narcotic~~ *addictive* drugs, alcohol, or any other drug or substance *or by mental illness or chronic physical illness*. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. *The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.* For purposes of funding this *medical assistance* program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 9. Repealer. The following section of the Montana Code Annotated is repealed:

37-3-208. Confidentiality of information — physician assistance program.

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 2, part 2, and the provisions of Title 37, chapter 2, part 2, apply to [section 2].

Approved April 7, 2011

CHAPTER NO. 123

[HB 80]

AN ACT GENERALLY REVISING LAWS RELATED TO UNEMPLOYMENT INSURANCE; CLARIFYING THAT EXCLUSION FROM WAGES FOR CERTAIN SELF-EMPLOYED WORKERS AND OWNERS DO NOT APPLY TO SIMILAR WAGES FOR CERTAIN TAX CREDIT PURPOSES; REVISING THE EXCLUSION FROM WAGES FOR CERTAIN SELF-EMPLOYED WORKERS AND OWNERS; REMOVING SERVICES PERFORMED BY SOLE PROPRIETORS, CERTAIN PARTNERS, PARTNERS IN CERTAIN LIMITED LIABILITY PARTNERSHIPS, AND MEMBERS OF CERTAIN LIMITED LIABILITY COMPANIES AS AN EXEMPTION FROM THE DEFINITION OF "EMPLOYMENT"; REMOVING SERVICES PERFORMED BY VOLUNTEERS IN CERTAIN FEDERAL PROGRAMS AS AN EXEMPTION FROM THE DEFINITION OF "EMPLOYMENT"; CLARIFYING SUBPOENA POWER AND ENFORCEMENT OPTIONS FOR THE DEPARTMENT OF LABOR AND INDUSTRY; ALLOWING INTERCEPTION OF LOTTERY WINNINGS TO OFFSET OVERPAYMENT OF UNEMPLOYMENT BENEFITS; CLARIFYING REFERENCES TO EMPLOYERS WITH EXPERIENCE RATING; AND AMENDING SECTIONS 15-31-150, 39-51-201, 39-51-204, 39-51-301, 39-51-1212, 39-51-1214, 39-51-2101, 39-51-2111, 39-51-2302, 39-51-3206, 53-20-221, AND 53-20-222, MCA.

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

Section 1. Section 15-31-150, MCA, is amended to read:

"15-31-150. Credit for research expenses and research payments.

(1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) (i) "Wages" has the meaning provided in 39-51-201, *except as provided in subsection (6)(e)(ii) of this section*, and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana.

(ii) ~~For~~ *Notwithstanding the exception to the definition of wages in 39-51-201(24)(b)(v), for a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.*

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section."

Section 2. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

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

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and ~~(1)(q)~~ (1)(p). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by

the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(20) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(21) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(23) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(24) (a) "Wages", unless specifically exempted under subsection (24)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318; or

(v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship pursuant to

39-51-207 or to a partner in a limited partnership that has filed with the secretary of state, when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

(25) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(26) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 3. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

~~(g) service performed by sole proprietors, working members of a partnership, members of a limited liability company treated as a partnership or sole proprietorship pursuant to 39-51-207, or partners in a limited liability partnership that has filed with the secretary of state;~~

~~(h)~~(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;

~~(i)~~(h) service performed as a direct seller as defined by 26 U.S.C. 3508;

~~(j)~~(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.

~~(k)~~(j) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

~~(l)~~(k) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

~~(m)~~(l) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

~~(n)~~(m) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

~~(o)~~(n) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

~~(p)~~(o) service performed by elected public officials;

~~(q)~~(p) 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.

~~(r)~~(q) 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;

~~(s)~~(r) 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;

~~(t)~~(s) 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;

~~(u)~~(t) 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)(u)~~ (1)(t) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

~~(v)~~(u) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

~~(w)~~(v) 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);

~~(x)~~(w) 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;

~~(y)~~(x) 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;

~~(z)~~(y) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; ~~or~~

~~(aa)~~(z) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than \$1,000 in the calendar year; *or*

(aa) 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) (a) Except as provided in subsection (2)(b), an individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(b) An officer or a manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) and who obtains an independent contractor exemption pursuant to 39-71-417(1)(a)(ii) is not considered an independent contractor for the purposes of this chapter.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.”

Section 4. Section 39-51-301, MCA, is amended to read:

“39-51-301. Administration — duties and powers of department — duties and powers of board — emergency provisions. (1) It is the duty of the department to administer this chapter. The department may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that ~~it~~ *the department* considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, ~~it~~ *the department* shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) (a) The department and the board may *jointly or individually* issue subpoenas and compel testimony and the production of evidence, including books ~~and~~, records, *papers, documents, and other objects that may be necessary and proper* in regard to any investigation or proceeding under this chapter.

(b) If a subpoena issued and served under this section is disobeyed or if a witness refuses to testify to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

(5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:

(i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and

(ii) the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.

(b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws.”

Section 5. Section 39-51-1212, MCA, is amended to read:

“39-51-1212. Experience rating for governmental entities. (1) The rates of governmental entities who have accumulated experience rating credits must be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods that are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates fixed using the median so that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(2) New governmental entities electing to pay contributions must be assigned the median rate for the year in which they become subject.

(3) The minimum rate may not be less than 0.06% and the maximum rate may not be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(4) If benefit charges exceed contributions paid in the last 2 completed state fiscal years, governmental entities' rates must be adjusted by increasing all rates to the next higher schedule.

(5) The computed rate is effective July 1 of each year.

(6) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(7) ~~A payment may not be required under this section~~ *The department may relieve benefit charges paid by a governmental employer with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual without a reduction in hours or wages.”*

Section 6. Section 39-51-1214, MCA, is amended to read:

“39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant’s base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant’s base period.

(2) ~~A charge may not be made to the~~ *The account of a covered an employer with an experience rating as provided in 39-51-1213 may not be charged with respect to benefits paid under the following situations:*

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307;

(e) if the base period employer is ordered to military service, as defined in 10-1-1003; ~~or~~

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10; *or*

(g) if the worker separates from employment as a result of domestic violence, a sexual assault, or stalking pursuant to 39-51-2111.”

Section 7. Section 39-51-2101, MCA, is amended to read:

“39-51-2101. Total unemployment — when. (1) An individual is considered to be totally unemployed in any week during which the individual:

~~(1)(a)~~ did not perform any work in employment and did not earn any wages for employment; *or*

~~(2)(b)~~ *except as provided in subsection (2):*

(i) due to a lack of work, worked less fewer than the customary hours that are normal for the individual’s particular occupation due to a lack of work and provided that the typically worked in employment by the individual; and

(ii) earned wages payable to the individual that are less than two times the individual’s weekly benefit amount.

(2) An individual is not considered to be unemployed in any week in which the individual works at least 40 hours in employment.”

Section 8. Section 39-51-2111, MCA, is amended to read:

“39-51-2111. Unemployment benefits for victims of domestic violence, sexual assault, or stalking. (1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence, a sexual assault, or stalking or the individual left work or was discharged because of an attempt on

the individual's part to protect the individual or the individual's child from domestic abuse, a sexual assault, or stalking.

(b) ~~An employer's~~ *The account of an employer with an experience rating as provided in 39-51-1213* may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence, a sexual assault, or stalking as provided for in subsection (1)(a).

(c) *An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after filing a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment insurance benefits that the individual is entitled to under other provisions of state law.*

~~(e) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after the filing of a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment benefits that the individual is entitled to under other provisions of state law.~~

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence, a sexual assault, or stalking if the individual provides one or more of the following:

(a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;

(b) a police record documenting the domestic violence, sexual assault, or stalking;

(c) medical documentation of domestic violence or a sexual assault; or

(d) other documentation or certification of domestic violence, a sexual assault, or stalking provided by a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has assisted the individual in dealing with domestic violence, a sexual assault, or stalking.

(3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

(4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the benefits applied for and granted under this section, including a summary of the demographics of applicants for and recipients of the benefits and the average and total cost of benefits provided.

(5) For the purposes of this section:

(a) "domestic violence" means the physical, mental, or emotional abuse of an individual or the individual's child by a person with whom that individual or the individual's child lives or has recently lived;

(b) "sexual assault" means sexual assault as described in 45-5-502, sexual intercourse without consent as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children as described in 45-5-625; and

(c) "stalking" has the meaning provided in 45-5-220."

Section 9. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause.

(1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified for any of the following reasons:

(a) The individual leaves employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing health care provider and, after recovering from the illness or injury when recovery is certified by a licensed and practicing health care provider, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible.

(b) The individual leaves temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons.

(c) The individual leaves employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account of an employer with an experience rating as provided in 39-51-1213.

(d) The individual leaves employment because of the mandatory military transfer of the individual's spouse. Any benefits paid under this subsection (2)(d) are not chargeable to the employer's account of an employer with an experience rating as provided in 39-51-1213.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."

Section 10. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Collection of benefit overpayments. (1) A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment.

(2) The department may collect a benefit overpayment and any penalty:

(a) by having the claimant pay the amount owed directly to the department by check, money order, credit card, debit card, or electronic funds transfer; or

(b) by offsetting the amount of the overpaid benefits owed against future unemployment benefits to be received by the claimant; or

(c) as provided in [section 13].

(3) The claimant is responsible for any:

(a) penalty established in accordance with 39-51-3201; and

(b) costs or processing fees associated with using the repayment methods set out in subsection (2)(a).

(4) The department may enter into an agreement with a claimant for the repayment of any benefit overpayment and penalty provided that repayment in full is made within 5 years of the date that it was established that an overpayment occurred.

(5) (a) *Except as provided in subsection (5)(b), a benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent., except in*

(b) *In cases of theft or fraud or when benefit overpayments have been made to winners of a state lottery as provided in [section 13], when benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled.*

(6) (a) The department may collect any benefit overpayment and penalty by directing the offset of any funds due the claimant from the state, except future unemployment benefits as provided in subsection (1) and retirement benefits. The department, through the department of revenue *or through the state lottery commission established in 23-7-201 if overpayment is to be collected as provided in [section 13]*, shall provide the claimant with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(b) The debt does not have to be determined to be uncollectible before being transferred for offset.

(7) (a) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment compensation debt.

(b) For the purposes of this subsection (7), “covered unemployment compensation debt” means:

(i) a benefit overpayment and penalty owed because of the erroneous payment of unemployment compensation resulting from fraud, which has been adjudicated as a debt under Montana law and has remained uncollected for not more than 10 years; or

(ii) employer contributions, penalty, and interest owed to the unemployment trust fund that the department determines are attributable to fraud and that have remained uncollected for not more than 10 years.

(8) If, upon demand of the department, the claimant fails to make the payments provided for in this section, the unpaid benefit overpayment and associated penalty may be treated as a judgment against the claimant at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the claimant. The department may enforce the judgment at any time within 10 years of creation of the lien.

(9) The department may waive the benefit overpayment if the department finds that:

(a) the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; or

(b) the overpayment was the result of department error.

(10) An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment.

(11) Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States.”

Section 11. Section 53-20-221, MCA, is amended to read:

“53-20-221. Liability training program and materials for respite care. (1) The department, in conjunction with the department of labor and industry, shall develop a training program and educational materials on labor law and liability issues related to the employment of a person by an individual for respite care services under the exemptions provided in 39-3-406(1)(p), 39-51-204(1)(y), and 39-71-401(2)(u). The educational materials must provide information on the labor law requirements applicable to an individual hiring a person for respite care services.

(2) The department shall make the training materials available to providers of community-based services for people with developmental disabilities that serve as the organized health care delivery system for respite care funds available from the department for use by individuals who hire and pay a person to provide respite care to a family member or a person for whom they are the legal guardian.

(3) To qualify for the respite care funds available from the department, an individual:

(a) shall receive training offered by a provider; and

(b) shall sign a statement acknowledging that the individual has completed the training and has read the related educational materials.”

Section 12. Section 53-20-222, MCA, is amended to read:

“53-20-222. Respite care and employment responsibilities — liabilities. (1) Contingent upon approval of the program by the federal government for purposes of receiving federal medicaid funds, the department may make payment to an approved, certified, and qualified medicaid provider who passes through the payment on behalf of a family to a person providing respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under 29 U.S.C. 213. A qualified medicaid provider who passes through payment may not be considered an employer by the department for the purposes of workers’ compensation, unemployment insurance, or wage and hour requirements.

(2) The department, through administrative rule, waiver of a state or federal program providing payment for respite care, or a pilot program, may not require a qualified medicaid provider to assume employer responsibilities or liabilities if the family chooses to negotiate the respite care agreement and the qualified provider does not:

(a) control the person who provides respite care; or

(b) direct the respite care provided by the person.

(3) (a) The department may provide an option to families to choose self-directed care.

(b) The department shall continue to provide families the choice of negotiating respite care by using a local qualified medicaid provider to provide pass-through payment and benefiting from the exemptions provided under 39-3-406(1)(p), 39-51-204(1)(y), and 39-71-402(2)(u).”

Section 13. Interception of lottery winnings for unemployment insurance offsets — notice to agency — procedures. (1) For the purposes of this section:

(a) “unemployment insurance benefit overpayments” includes collections that are made pursuant to 39-51-3206;

(b) “unpaid taxes, penalties, and interest” includes payments required from employers under 39-51-404, 39-51-603, 39-51-1103, 39-51-1105, 39-51-1125, and 39-51-1301; and

(c) “unemployment insurance division” means the unemployment insurance division of the department of labor and industry.

(2) The unemployment insurance division shall periodically certify to the state lottery the names and social security numbers of persons who have incurred unemployment insurance benefit overpayments and the names and social security numbers of individual employers who are liable for unpaid taxes, including penalties and interest assessed on unpaid taxes.

(3) The state lottery shall deduct and withhold from any payment of lottery winnings the amount specified by the unemployment insurance division as the amount of the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

(4) The state lottery shall pay any amount deducted and withheld under subsection (3) to the unemployment insurance division for application to the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

(5) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as lottery winnings and paid by the individual to the unemployment insurance division as repayment against the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

Section 14. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 15. Codification instruction. [Section 13] is intended to be codified as an integral part of Title 39, chapter 51, part 32, and the provisions of Title 39, chapter 51, part 32, apply to [section 13].

Approved April 7, 2011

CHAPTER NO. 124

[HB 82]

AN ACT REQUIRING THE BOARD OF MEDICAL EXAMINERS TO PROVIDE AN ANNUAL REPORT ON THE NUMBER AND TYPES OF COMPLAINTS INVOLVING PHYSICIAN PRACTICES IN PROVIDING WRITTEN CERTIFICATION FOR THE MEDICAL USE OF MARIJUANA; AMENDING SECTIONS 37-3-203, 50-46-103, AND 50-46-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-3-203, MCA, is amended to read:

“37-3-203. Powers and duties. (1) The board may:

(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

(e) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) If the board establishes a program pursuant to subsection (1)(d), the board shall ensure that a licensee who is required or volunteers to participate in the program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified program within this state and may not require a licensee to enroll in a qualified program outside the state unless the board finds that there is no qualified program in this state.

(3) (a) *The board shall report annually on the number and types of complaints it has received involving physician practices in providing written certification, as defined in 50-46-102, for the medical use of marijuana provided for in Title 50, chapter 46. The report must contain:*

(i) the number of complaints received by the board pursuant to 37-1-308;

(ii) the number of complaints for which a reasonable cause determination was made pursuant to 37-1-307;

(iii) the general nature of the complaints;

(iv) the number of investigations conducted into physician practices in providing written certification; and

(v) the number of physicians disciplined by the board for their practices in providing written certification for the medical use of marijuana.

(b) Except as provided in subsection (3)(c), the report may not contain individual identifying information regarding the physicians about whom the board received complaints.

(c) For each physician against whom the board takes disciplinary action related to the physician's practices in providing written certification for the medical use of marijuana, the report must include:

(i) the name of the physician;

(ii) the general results of the investigation of the physician's practices; and

(iii) the disciplinary action taken against the physician.

(d) The board shall provide the report to the children, families, health, and human services interim committee by August 1 of each year and shall make a copy of the report available on the board's website."

Section 2. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures — minors — confidentiality — report reports to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

- (a) written certification that the person is a qualifying patient;
- (b) an application or renewal fee;
- (c) the name, address, and date of birth of the qualifying patient;
- (d) the name, address, and telephone number of the qualifying patient's physician; and
- (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions signs and submits a written statement that:

- (a) the minor's physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the medical use of marijuana; and
- (b) the minor's custodial parent or legal guardian with responsibility for health care decisions:
 - (i) consents to the medical use of marijuana by the minor;
 - (ii) agrees to serve as the minor's caregiver; and
 - (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:

- (i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver; and
 - (ii) acknowledging that possession of the registry identification card does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a qualifying patient.
- (b) The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense.
- (c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

- (a) the name, address, and date of birth of the qualifying patient;
- (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

(c) the date of issuance and expiration date of the registry identification card; and

(d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department; or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians.

(10) *The board of medical examiners shall report annually to the legislature, as provided in 37-3-203, on the number and types of complaints the board has received involving physician practices in providing written certification for the medical use of marijuana.*

Section 3. Section 50-46-202, MCA, is amended to read:

"50-46-202. Disclosure of confidential information relating to medical use of marijuana — penalty. (1) *Except as provided in 37-3-203, a person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of 50-46-103.*

(2) A person convicted of disclosure of confidential information relating to medical use of marijuana shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 4. Coordination instruction. (1) If House Bill No. 161 is passed and approved, then [this act] is void.

(2) If House Bill No. 175 is passed by the electorate in 2012, then [this act] is void on [the effective date of House Bill No. 175].

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

Approved April 7, 2011

CHAPTER NO. 125

[HB 117]

AN ACT REQUIRING CERTAIN ADULT OFFENDERS SUBJECT TO SUPERVISION BY THE DEPARTMENT OF CORRECTIONS PURSUANT TO THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION TO PROVIDE A BIOLOGICAL SAMPLE FOR DNA TESTING; AMENDING SECTION 44-6-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 44-6-103, MCA, is amended to read:

“44-6-103. Collection of samples and maintenance of data. (1) Following entry of judgment, a person convicted of a felony offense, a youth found under 41-5-1502 to have committed a sexual or violent offense, or a defendant ordered under 46-18-202 to provide a biological sample for DNA testing, or an adult offender convicted in another state and sentenced to death or imprisonment for more than 1 year who is subject to supervision by the department of corrections pursuant to the Interstate Compact for Adult Offender Supervision provided for in 46-23-1115 shall provide a biological sample for DNA analysis to determine identification characteristics specific to the person. The sample must be provided to the department of corrections if the person is incarcerated in a facility administered by the department of corrections. If the person is not incarcerated in a facility administered by the department of corrections, the sample must be provided to a person or entity designated by the county sheriff.

(2) The biological sample must be collected, stored, and sent by the department of corrections or the person or entity designated by the county sheriff under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of public health and human services.

(3) The offender is responsible, if able to pay, for the cost of the collection of the sample. The fees charged for the collection may not exceed the actual costs of collection.

(4) The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

(5) The knowing refusal or failure to provide a biological sample under this part is grounds for revocation of a suspended or deferred imposition of sentence.”

Section 2. Applicability. [This act] applies to an adult offender who is convicted in another state and sentenced to death or imprisonment for more than 1 year and is subject to supervision by the department of corrections pursuant to the Interstate Compact for Adult Offender Supervision provided for in 46-23-1115 on or after October 1, 2011.

Approved April 7, 2011

CHAPTER NO. 126

[HB 142]

AN ACT REVISING LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES AND REPORTS TO THE LEGISLATURE; REQUIRING INTERIM COMMITTEES TO REVIEW STATUTORILY ESTABLISHED

ADVISORY COUNCILS AND REQUIRED REPORTS OF THEIR ASSIGNED AGENCIES TO MAKE RECOMMENDATIONS REGARDING RETENTION OR ELIMINATION; REVISING REQUIREMENTS RELATING TO REPORTS TO THE LEGISLATURE; AND AMENDING SECTIONS 5-5-215 AND 5-11-210, MCA.

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

Section 1. 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 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;*
- ~~(d)(e)~~ review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
- ~~(e)(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.

(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 2. Section 5-11-210, MCA, is amended to read:

“5-11-210. Clearinghouse for reports to legislature. (1) For the purposes of this section, “report” means a *written* report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the appropriate interim or statutory committee:

- (a) the final title of the report;
- (b) an abstract or description of the contents of the report, not to exceed 100 words;
- (c) *if the report is available electronically, its location on the internet; and*
- ~~(e)(d)~~ a recommendation on how many *paper* copies of the report, *if any*, should be provided to the legislature;
- ~~(d)~~ the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and
- ~~(e)~~ an estimated cost for each copy of the report.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the appropriate interim or statutory committee shall, in writing, direct the reporting entity to provide a specific number of *paper* copies. The number of copies required is at the sole discretion of the appropriate interim or statutory committee. The appropriate interim or statutory committee may require the reporting entity to mail the copies of the report.

(4) The appropriate interim or statutory committee may require that the report be submitted in an electronic format *that is* usable on the legislature's current computer hardware; ~~or in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory~~ *digital form*.

(5) 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.

(6) The executive director of the legislative services division shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, ~~mail~~ *provide* to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b), ~~and the location of electronic copies. The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.~~

(8) The executive director of the legislative services division shall ~~make~~ *provide* copies of reports requested pursuant to subsection (7) ~~available~~ to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative services division may keep as many copies of a report as are necessary and discard the rest ~~or return them to the agency.~~

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201.

(11) Each report to the legislature required under 17-6-230, 19-2-405, 19-2-407, and 19-20-201 must be provided to the legislative services division as soon as the report is published. The legislative services division shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the legislative services division shall ensure that members of the state administration and veterans' affairs interim committee and the legislative finance committee receive copies of the reports."

Approved April 7, 2011

CHAPTER NO. 127

[HB 171]

AN ACT REVISING LAWS RELATED TO LICENSE PLATE SIZES; DESIGNATING SMALL LICENSE PLATES AS THE DEFAULT SIZE FOR A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS; ALLOWING A PERSON REGISTERING A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS TO CHOOSE LARGE LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 61-3-332, MCA, is amended to read:

“61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word “permanent” on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under 61-3-332 *this section*, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until

January 1, 2015, and upon payment of the fee required in 61-3-321(12)(b), a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) ~~(a) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be metal and treated with a reflectorized background material according to specifications prescribed by the department. The word "Montana" must be placed on each license plate and the outline of the state of Montana must be used as a distinctive border on each standard license plate.~~

(b) Plates for semitrailers, travel trailers, pole trailers, trailers with a declared weight of 6,000 pounds or more, and motor vehicles, other than motorcycles and quadricycles, must be 6 inches wide and 12 inches in length.

(c) Plates for motorcycles and quadricycles must be 4 inches wide and 7 inches in length.

(d) The department shall issue plates that are 4 inches wide and 7 inches in length for trailers with a declared weight of less than 6,000 pounds unless a person registering a trailer with a declared weight of less than 6,000 pounds requests plates that are 6 inches wide and 12 inches in length. A person registering a trailer shall pay all applicable fees for the plates chosen.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the

markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the

department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.”

Section 2. Coordination instruction. If both Senate Bill No. 49 and [this act] are passed and approved, then Senate Bill No. 49 is void.

Section 3. Effective date. [This act] is effective January 1, 2012.

Approved April 7, 2011

CHAPTER NO. 128

[HB 212]

AN ACT ELIMINATING COUNTY CLASSIFICATIONS; REPLACING REFERENCES TO COUNTY CLASSIFICATIONS WITH AMOUNT OF TAXABLE VALUATION OR POPULATION; AMENDING SECTIONS 2-18-641, 2-18-702, 7-2-2213, 7-2-2218, 7-2-2222, 7-2-2225, 7-3-1214, 7-3-1306, 7-3-1341, 7-4-2405, 7-4-2601, 7-4-2602, 7-4-2703, 7-4-2705, 7-4-3006, 7-6-2102, 7-6-2401, 7-6-2413, 7-21-3211, 7-22-2142, 7-32-101, 7-32-2102, 7-32-2111, 13-17-101, 15-23-703, 15-24-3001, 15-36-332, 15-39-110, 30-14-122, 39-4-107, 80-7-814, AND 90-6-1001, MCA; REPEALING SECTIONS 7-1-2111 AND 7-1-2112, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-18-641, MCA, is amended to read:

“2-18-641. Exemption — employees of certain county hospitals or rest homes and hospital districts. (1) An employee of a county hospital or county rest home in a ~~third, fourth, fifth, sixth, or seventh class~~ county *having a taxable valuation of less than \$30 million* or an employee of a hospital district is exempt from the provisions of this part.

(2) For any reduction in leave benefits for an employee subject to subsection (1), there must be an increase in compensation or benefits.”

Section 2. Section 2-18-702, MCA, is amended to read:

“2-18-702. Group insurance for public employees and officers. (1) (a) Except as provided in subsection (1)(c), all counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing

greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations, hospitals, health centers, or nursing homes to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee, organization, hospital, health center, or nursing home to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(c) The governing body of a ~~third, fourth, fifth, sixth, or seventh class~~ county *having a taxable valuation of less than \$30 million* or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home or nursing home, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).

(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licensees in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Section 3. Section 7-2-2213, MCA, is amended to read:

"7-2-2213. Resolution of board of county commissioners. The board of county commissioners, on the final hearing of the petition or petitions, shall, by a resolution entered on its minutes, determine:

(1) the boundaries of the proposed new county, and the boundaries determined by the board must be the boundaries of the proposed new county if it is created as provided in this part;

(2) whether the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county as required in this part or, in cases where separate petitions are presented from portions of two or more existing counties as required in this part, whether each petition is signed by at least 50% of the registered electors of that portion of each of the existing counties that is proposed to be taken into the proposed new county;

(3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;

(4) whether the proposed new county and affected existing counties meet the limitations contained in 7-2-2202;

(5) ~~the class to which the proposed new county will belong after its creation and~~ the name of the proposed new county as stated in the petition; and

(6) whether the area embraced within the proposed new county will be reasonably compact.”

Section 4. Section 7-2-2218, MCA, is amended to read:

“7-2-2218. Form of ballot. (1) If the proposed new county is to be formed from one county or from portions of two or more existing counties, the ballot must be in the following form:

(a) notice required by 7-2-2215 must require the electors to cast ballots that contain the words “For the new county of... (giving the name of the proposed new county) — Yes” and “For the new county of... (giving the name of the proposed new county) — No”.

(b) The ballots must also contain the names of individuals to be voted for to fill the various elective offices designated in the notice ~~for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as provided in this part.~~

(c) There must also be printed upon the ballot the words “For the county seat” and the names of all cities or towns that may have filed with the election administrator a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate the elector’s choice for county seat by marking a cross (X) opposite the name of the city or town for which the elector desires to cast a vote.

(2) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the notice required by 7-2-2215(1) must require the electors to cast ballots that must contain the legal description of the territory to be taken from the county in which the election is held, together with any name or names for the territory that may be in common use, and the words “For the territory described (or commonly known as....) to be detached from.... County and added to.... County — Yes” and “For the territory described (or commonly known as....) to be detached from.... County and added to.... County — No”.

Section 5. Section 7-2-2222, MCA, is amended to read:

“7-2-2222. Effect of election — resolution by county commissioners.

(1) If, upon the canvass of the votes cast at the election, it appears that more than 50% of the votes cast by those voting in an election under 7-2-2215(1) in the county, by those voting in the same election in the territory proposed to be taken from the county, and by those voting in an election held under 7-2-2215(4) are affirmative, the board of county commissioners shall, by a resolution entered upon its minutes;:

(a) declare the new or enlarged county duly formed and created as a county of this state, ~~of the class to which the same belongs and~~ under the name of ... County; ~~and, if~~

(b) *if appropriate, declare* that the city or town receiving the highest number of votes cast at the election for county seat ~~shall be~~ *is* the county seat of the county until removed in the manner provided by law; and

(c) designate and declare the individuals receiving, respectively, the highest number of votes for the several offices to be filled at the election to be duly elected to the offices.

(2) ~~However, if~~ upon such *the* canvass it appears that more than 50% of the votes cast on the issue by those voting in the county, or by those voting in the territory proposed to be taken from the county, or by those voting in an election held under 7-2-2215(4) are negative, the board canvassing the vote as provided herein shall pass a resolution in accordance therewith, and thereupon with the vote and the proceedings relating to division of such *the* county or counties shall *must* cease. No other proceedings in relation to any other division of the old county or counties shall *may* be instituted for at least 4 years after such *the* determination.”

Section 6. Section 7-2-2225, MCA, is amended to read:

“7-2-2225. Officers of new county. (1) Except as provided in subsections (2) through (4), at the election provided for in 7-2-2215, there must be chosen a board of county commissioners and other county and district officers as are provided by law for counties of the class to which the new county belongs.

(2) All elected, qualified, and acting officers of the county or counties who reside within the proposed new county are considered to be officers of the new county if they file, within 5 days after the final hearing and determination of the petition for the proposed new county, with the board of county commissioners whose duty it is to call the election. Filing with the board is the officers’ declaration of intent to become officers of the proposed new county. The board issuing the proclamation of the election shall ~~omit providing~~ *may not provide* for the election of any officers who have filed their declaration to continue in office.

(3) All elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as justices of the peace in the new county for the remainder of the term for which they were elected.

(4) All elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of the county into school districts, as provided in Title 20, chapter 6, shall hold office as school trustees in the new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as these districts are organized.

(5) The officers elected or appointed under the provisions of this part shall perform the duties and receive the compensation provided by general law for the office to which they have been appointed or elected in the counties of the class to which the new county belongs.”

Section 7. Section 7-3-1214, MCA, is amended to read:

“7-3-1214. Consolidated municipality commission. (1) Except as otherwise provided in this part or part 13, all powers of the consolidated municipality are vested in a commission. ~~For the purpose of determining the number of members composing the commission, consolidated municipalities organized under the provisions of this part and part 13 shall be classified and all of the provisions of 7-1-2111 and 7-1-2112 govern and control the classification of the consolidated municipalities.~~

(2) (a) In consolidated municipalities ~~of the first class having a taxable valuation of \$50 million or more,~~ the commission shall *must* consist of seven members.

(b) In consolidated municipalities ~~of the second class, third class, or fourth class having a taxable valuation of \$12.5 million or more and less than \$50 million~~, the commission ~~shall~~ must consist of five members.

(c) In consolidated municipalities ~~of the fifth class, sixth class, or seventh class having a taxable valuation of less than \$12.5 million~~, the commission ~~shall~~ must consist of three members.”

Section 8. Section 7-3-1306, MCA, is amended to read:

“7-3-1306. Division of treasury. (1) There ~~shall~~ must be in the department of finance a division of the treasury, the head of which ~~shall~~ must be treasurer of the municipality.; ~~shall have the~~ *The treasurer has the* powers and *shall* perform the duties prescribed for city treasurers and county treasurers by general law; and ~~shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class~~ must be bonded for the faithful performance of official duties pursuant to Title 2, chapter 9, part 7.

(2) All money received by an officer or employee of the municipality for or in connection with the business of the municipality ~~shall~~ must be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of ~~such~~ the money into the treasury and shall also, in the manner hereinafter provided *in this part*, designate the banking institutions with which it ~~shall~~ must be deposited.”

Section 9. Section 7-3-1341, MCA, is amended to read:

“7-3-1341. Department of law. (1) The department of law is in the charge of a director appointed by the commission without definite term who must be a resident and elector of the municipality and who must possess all of the qualifications required of county attorneys.

(2) The director has all the powers and, either personally or through designated assistants, shall perform all the duties that are prescribed for county attorneys, city attorneys, and public administrators, and in addition, the director is chief legal adviser of and attorney for the municipality and of all departments and offices of the municipality. The director shall perform other duties that may be required by the commission.

(3) The director shall qualify by taking the oath of office prescribed by the constitution and by giving a bond in the amount required of a *county* public administrator in a county of the same class. ~~The director must receive from the state as part of the director's salary the same amount that is paid by the state to county attorneys in counties of the same class, and the remainder of the salary must be paid by the municipality.~~ For all purposes in connection with criminal prosecutions, the director must be known and designated as “county attorney of the city and county of”

Section 10. Section 7-4-2405, MCA, is amended to read:

“7-4-2405. Appointment of deputies in certain counties of seventh class. (1) ~~In any county of the seventh class having less than 2,000 population, there shall not be appointed any A deputy county officer or deputy designated by any a county officer of such county unless the appointment of such deputy, designating the term of service and compensation thereof, shall be first authorized by the board of county commissioners of such county~~ *may not be appointed in a county having a taxable valuation of less than \$5 million and a population of less than 2,000 unless the appointment, term of service, and compensation is authorized by the board of county commissioners.*

(2) The board ~~shall~~ may not approve any compensation in payment for services of ~~any~~ a person appointed by or acting under ~~any~~ an elected or

appointed officer of ~~said the county whose~~ *if the person's* appointment, as herein provided, shall not have been authorized and approved by the board of such ~~county~~ *has not been authorized by the board as provided in this section."*

Section 11. Section 7-4-2601, MCA, is amended to read:

"7-4-2601. Limitation on number of deputy county clerks. The whole number of deputies allowed the county clerk ~~must~~ *may* not exceed:

(1) six in counties of ~~the first and second classes~~ *having a taxable valuation of \$30 million or more;*

(2) three in counties of ~~the third class~~ *having a taxable valuation of \$20 million or more and less than \$30 million;*

(3) two in counties of ~~the fourth and fifth classes~~ *having a taxable valuation of \$10 million or more and less than \$20 million;*

(4) one in counties of ~~the sixth and seventh classes~~ *having a taxable valuation of less than \$10 million."*

Section 12. Section 7-4-2602, MCA, is amended to read:

"7-4-2602. Designation of chief deputy by county clerk. The county clerk in counties of ~~the first class~~ may designate ~~one of the~~ *a* deputy clerks *clerk* as chief deputy clerk."

Section 13. Section 7-4-2703, MCA, is amended to read:

"7-4-2703. Limitation on number of deputies. In counties of ~~the first and second class~~ *having a taxable valuation of \$30 million or more*, the county attorney may appoint one chief deputy and one deputy. In all other counties, the county attorney may appoint a chief deputy or a deputy only with the approval of the board of county commissioners."

Section 14. Section 7-4-2705, MCA, is amended to read:

"7-4-2705. Employment of special counsel in certain counties. Except in counties of ~~the first class~~ *having a taxable valuation of \$50 million or more*, the board of county commissioners ~~has the power, whenever in its judgment the ends of justice or the interest of the county require it, to~~ *may* employ or authorize the county attorney to employ special counsel to assist in the prosecution of any criminal case pending in ~~such~~ *the* county or to represent ~~said~~ *the* county in any civil action in which ~~such~~ *the* county is a party."

Section 15. Section 7-4-3006, MCA, is amended to read:

"7-4-3006. Limitation on number of deputy district court clerks. The ~~whole~~ number of deputies allowed the clerk of the district court may not exceed one chief deputy and up to:

(1) six deputies in counties of ~~the first or second class~~ *having a taxable valuation of \$30 million or more;*

(2) four deputies in counties of ~~the third or fourth class~~ *having a taxable valuation of \$15 million or more and less than \$30 million and having more than one district judge;*

(3) two deputies in counties of ~~the third or fourth class~~ *having a taxable valuation of \$15 million or more and less than \$30 million and having one district judge;*

(4) one deputy in counties of ~~the fifth, sixth, or seventh class~~ *having a taxable valuation of less than \$15 million."*

Section 16. Section 7-6-2102, MCA, is amended to read:

“7-6-2102. Limitation on number of deputy county treasurers. (1) Except as provided in subsection (2), the whole number of deputies allowed the county treasurer ~~must~~ *may* not exceed:

(a) two in counties ~~of the first class~~ *having a taxable valuation of \$50 million or more;*

(b) one in counties ~~of all other classes~~ *having a taxable valuation of less than \$50 million.*

(2) The board of county commissioners may allow ~~such~~ additional deputies as may be necessary during the months of November and December of each year.”

Section 17. Section 7-6-2401, MCA, is amended to read:

“7-6-2401. Creation of office of county auditor. (1) The office of county auditor exists in all counties ~~of the first, second, third, or fourth class that have~~ *having* a population in excess of 15,000.

(2) County commissioners in counties to which subsection (1) does not apply may create a county auditor’s position, either as a full-time or a part-time position or in combination with another position pursuant to 7-4-2301.

(3) The provisions of 7-6-2403 through 7-6-2412 do not apply to counties that do not have county auditors.”

Section 18. Section 7-6-2413, MCA, is amended to read:

“7-6-2413. Limitation on number of deputy county auditors. ~~The whole number of deputies allowed to county auditors must not exceed one in counties of the first, second, and third classes~~ *A county auditor may not have more than one deputy.*”

Section 19. Section 7-21-3211, MCA, is amended to read:

“7-21-3211. Employment of stock inspector. (1) ~~Whenever the board of county commissioners is satisfied, from its own knowledge or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise disposed of contrary to law in the county and in a manner that the public officers of the county are not in a position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution, the board of each county, except in counties of the first class, has the power to employ a stock inspector~~ *A board of county commissioners may employ a stock inspector if:*

(a) *the board has found, based on information that the board has gathered or that has been provided to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise illegally disposed of; and*

(b) *the county officers are unable to apprehend the individuals suspected of the offense or obtain the necessary evidence on which to base a prosecution.*

(2) ~~Whenever~~ *When* a stock inspector is employed, the employment is only for the case or cases then under investigation. During the ~~existence of the appointment~~ *inspector’s employment*, the inspector is vested with the same police power and authority as the sheriff, within the limitation of the purposes for which the inspector is ~~appointed~~ *employed.*”

Section 20. Section 7-22-2142, MCA, is amended to read:

“7-22-2142. Sources of money for noxious weed fund. (1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from ~~the general fund of the county~~ *any source in an amount not less than \$100,000 or an amount equivalent to 1.6 mills levied upon the taxable value of all property*; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county ~~or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or \$100,000.~~ The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

(5) ~~The~~ *Subject to 15-10-420*, commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. ~~The~~ *Pursuant to an election held in accordance with 15-10-425*, the amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone.”

Section 21. Section 7-32-101, MCA, is amended to read:

“7-32-101. Department of public safety authorized. In counties ~~other than first- and second-class counties~~ *having a taxable valuation of less than \$30 million*, on agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established a department of public safety in lieu of a police department and a sheriff’s office.”

Section 22. Section 7-32-2102, MCA, is amended to read:

“7-32-2102. Undersheriff to be appointed — return to other duties.

(1) The sheriff, as soon as possible after taking office, shall, except in counties ~~of the seventh class with a population of less than 750~~, appoint an undersheriff to serve at the pleasure of the sheriff. The undersheriff has the same powers and duties as a deputy sheriff.

(2) A deputy sheriff appointed undersheriff as provided in subsection (1) shall resume other duties within the sheriff’s office, while maintaining tenure and seniority, if the sheriff appoints another to succeed the deputy sheriff as undersheriff. Upon the return to the position of deputy sheriff, the person must be paid the same salary the person would have received had the person not taken the undersheriff position.”

Section 23. Section 7-32-2111, MCA, is amended to read:

“7-32-2111. Hours of work for deputy sheriff ~~of county of first- or second-class.~~ Any A person employed as a deputy sheriff of a ~~first- or~~

~~second-class county shall not be forced~~ *having a taxable valuation of \$30 million or more may not be required* to work in excess of 40 hours per a week except in case of an emergency and ~~shall be~~ *is* entitled to 2 days off in each 7-day period.”

Section 24. Section 13-17-101, MCA, is amended to read:

“13-17-101. Secretary of state to approve voting systems. (1) A voting system may not be used for any election in this state unless the system is approved by the secretary of state as provided in this section.

(2) The secretary of state shall:

(a) examine a voting system proposed for use to determine if it complies with the requirements of 13-17-103;

(b) within 30 days after examining the voting system, file a report of the examination in the secretary of state’s office;

(c) include in the report the reasons for the voting system’s approval or disapproval and the secretary of state’s opinion about the economic and procedural impact that the voting system’s use or nonuse may have on the various ~~classes of~~ counties of this state; and

(d) within 5 days after filing the report, transmit to each election administrator, including school election administrators for elections under Title 20, chapter 20, a copy of the report.

(3) Voting systems may not be used in an election unless approved by the secretary of state 60 days or more prior to the election at which they will be used.”

Section 25. Section 15-23-703, MCA, is amended to read:

“15-23-703. Taxation of gross proceeds — taxable value for county classification and nontax purposes. (1) (a) The department shall compute from the reported value of coal gross proceeds a tax roll that must be transmitted to the county treasurer on or before September 15 of each year. The department may not levy or assess any mills against coal gross proceeds but shall, subject to subsection (1)(b), levy a tax of 5% against the value of coal as provided in 15-23-701(4). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(b) If the county grants a tax abatement for production from a new or expanding underground mine as provided in 15-23-715, the department shall levy a tax at a rate that would, after providing for payment to the state of the amount attributable to all applicable state mill levies as if the tax rate were 5%, reduce the tax received by county taxing jurisdictions and any school district on the new or expanded production by 50%.

(2) For ~~county classification and~~ all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) (a) Except as provided in subsections (4) and (7) and subject to subsection (3)(b), coal gross proceeds taxes must be allocated to the state, county, and school districts in the same relative proportions as the taxes were distributed in fiscal year 1990.

(b) The county treasurer shall multiply the coal gross proceeds taxes collected in the county under this part by the relative proportions determined for the state, county, and school districts under subsection (3)(a). Those amounts must be distributed as follows:

(i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;

(ii) except as provided in subsection (5), the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;

(iii) except as provided in subsection (6), the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(4) If there is a distribution of coal gross proceeds from a new or expanding underground mine with a tax abatement as provided under 15-23-715, the county treasurer shall distribute:

(a) the state's share of the coal gross proceeds determined under subsection (1)(b) in the relative proportion required by the appropriate levies for state purposes; and

(b) the county's share and any school district's share of the coal gross proceeds determined under subsection (1)(b) as provided in this section.

(5) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (3)(b)(i), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in the previous fiscal year.

(b) If the allocation in subsection (5)(a) exceeds the total budget of a taxing unit, the commissioners may direct the county treasurer to reallocate the excess to any taxing unit within the county.

(6) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in the previous fiscal year.

(b) If the allocation under subsection (6)(a) exceeds the total budget for a fund, the trustees may reallocate the excess to any budgeted fund of the school district.

(7) Except as provided in subsections (8) and (9), the county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(8) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds under subsection (7) in the same manner as provided in subsection (5).

(9) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county

treasurer under subsection (7) in the same manner as provided in subsection (6).”

Section 26. Section 15-24-3001, MCA, is amended to read:

“15-24-3001. Electrical generation and transmission facility exemption — definitions. (1) (a) Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from property taxation for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related delivery facilities commences to construct the facility as defined in 75-20-104(6)(a) and (6)(b). In order to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that facility’s net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility’s completion.

(b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for generation facilities powered by oil or gas turbines.

(2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not contracted for in this fashion may be sold at market rates.

(3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft, sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.

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

(a) (i) “Electrical generation facility” means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 20 average megawatts or more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(ii) The term does not include:

(A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes; or

(B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

(b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the electrical generation facility to the existing network transmission system.

(c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

(5) The department shall appraise exempt electrical generation facilities for each year that the property is exempt and determine the taxable value of the property as if it were subject to property taxation. ~~The taxable value determined by the department must be included as taxable valuation for the purposes of county classification under 7-1-2111.~~

Section 27. Section 15-36-332, MCA, is amended to read:

"15-36-332. Distribution of taxes to taxing units — appropriation.

(1) (a) By the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) By the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil and gas natural resource distribution account under 15-36-331(2)(b) as provided in subsection ~~(8)~~ (7) of this section.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%

Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

~~(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.~~

(8)(7) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

~~(9)(8)~~ The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund."

Section 28. Section 15-39-110, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which

production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360.

(11) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

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

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

(12) (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as taxable value ~~for county classification purposes under 7-1-2111 and for determining school district debt limits under 20-9-406.~~

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

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

Section 29. Section 30-14-122, MCA, is amended to read:

"30-14-122. Employment of investigator by county attorney. The county attorney in ~~first- and second-class~~ counties *having a taxable valuation of \$30 million or more* may designate an employee to act as a full-time investigator."

Section 30. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, on all contracts let by them, and for all janitors (except in courthouses of ~~sixth- and seventh-class~~ counties *having a taxable valuation of less than \$10 million*), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by a municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. An employee may not be required to work in excess of 8 hours in any one workday if the employee prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when a bargaining unit is not recognized.”

Section 31. Section 80-7-814, MCA, is amended to read:

“80-7-814. Administration and expenditure of funds. (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches \$10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall deposit any reverted funds into the noxious weed management trust fund as principal.

(3) The principal of the noxious weed management trust fund in excess of \$10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of \$10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with *the lesser of*:

(a) a levy in an amount not less than 1.6 mills or an equivalent amount from another source; or

(b) by *appropriating* an amount of not less than \$100,000 ~~for first-class counties, as defined in 7-1-2111~~ from any source.

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.”

Section 32. Section 90-6-1001, MCA, is amended to read:

“90-6-1001. Oil, gas, and coal natural resource accounts. (1) There is an oil and gas natural resource distribution account in the state special revenue fund. The collections allocated to the account from 15-36-304(7)(b) must be deposited in the account to be used as provided in ~~15-36-332(8) and (9)~~ *15-36-332(7) and (8)*.

(2) There is a coal natural resource account in the state special revenue fund. The collections allocated to the account from 15-35-108(7) must be deposited in the account. The money in the account is allocated to the coal board provided for in 2-15-1821 and may be used only for local impact grants provided for in 90-6-205 through 90-6-207 and costs related to the administration of the grant awards.”

Section 33. Repealer. The following sections of the Montana Code Annotated are repealed:

7-1-2111. Classification of counties.

7-1-2112. Designation of county classification by county commissioners.

Section 34. Effective date. [This act] is effective July 1, 2011.

Approved April 7, 2011

CHAPTER NO. 129

[HB 229]

AN ACT ADDING CERTAIN COMMERCIAL MOTOR VEHICLES TO THE LIST OF MOTOR VEHICLES ON WHICH DEMONSTRATOR LICENSE PLATES MAY BE USED; AND AMENDING SECTION 61-4-129, MCA.

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

Section 1. Section 61-4-129, MCA, is amended to read:

“61-4-129. Assignment of demonstrator plates. (1) (a) A dealer or wholesaler may purchase demonstrator plates at a fee of \$5 a plate.

(b) Demonstrator plates may not be issued to a new or used dealer whose business is restricted to the sale of power sports vehicles.

(2) (a) Except as provided in subsection (2)(c), demonstrator plates may be used on a motor vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), or on a *truck, truck tractor, truck tractor pulling a laden or unladen semitrailer, or travel trailer* that is:

(i) being demonstrated and offered for sale, for not more than 72 hours when operated by an individual holding a valid operator's license;

(ii) owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) being tested for repair;

(iv) being moved to or from a dealer's place of business for sale;

(v) being moved to or from service and repair facilities before sale; and

(vi) being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Demonstrator plates may be used:

(i) on trailers being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on travel trailers held for sale to demonstrate the towing capability of the motor vehicle, for not more than 72 hours;

(iii) on any motor vehicle owned by the dealer that is used only to move a travel trailer that is in the dealer's inventory; and

(iv) on trailers being moved to or from exhibitions within the state if the exhibition does not exceed a period of 20 days.

(c) Extra demonstrator plates may be made available to dealers eligible for demonstrator plates under subsection (2)(a) to provide to one or more service repair facilities to be used when moving a motor vehicle in the dealer's inventory to and from the dealer's place of business and the service and repair facility prior to sale. A motor vehicle displaying demonstrator plates under this subsection is not required to have a Monroney label or a buyer's guide label as required by 61-4-123(2).

(d) A motor vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the motor vehicle."

Approved April 7, 2011

CHAPTER NO. 130

[HB 250]

AN ACT REPEALING THE STATUTE CODIFYING THE CRIMINAL JUSTICE PROCEDURE REQUIRING A PROSECUTOR TO NOTIFY A DEFENDANT OF AN INTENT TO INTRODUCE EVIDENCE OF PREVIOUS CRIMES; AMENDING SECTION 46-13-110, MCA; REPEALING SECTION 46-13-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *State v. Just*, 184 Mont. 262, 602 P.2d 957 (1979), the Montana Supreme Court ordered that notice be given to a criminal defendant by the prosecution that the prosecution intended to introduce evidence of the

commission of previous crimes by the defendant and further specified what was to be contained in that notice to the defendant; and

WHEREAS, on December 14, 2010, the Montana Supreme Court issued its opinion in State v. District Court of the 18th Judicial District, 2010 MT 263, 358 Mont. 325 (2010), holding that State v. Just was wrongly decided and overruling its previous opinion in that case; and

WHEREAS, in its opinion in State v. District Court of the 18th Judicial District, the Supreme Court recommended that the Legislature repeal section 46-13-109, MCA, which codified its opinion in State v. Just.

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

Section 1. Section 46-13-110, MCA, is amended to read:

“46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant’s counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking persistent felony offender status, 46-13-108;

~~(h) notice of other crimes, wrongs, or acts, 46-13-109;~~

~~(h)~~(h) motion to suppress, 46-13-301 and 46-13-302;

~~(i)~~(i) motion to dismiss, 46-13-401 and 46-13-402;

~~(k)~~(j) motion for change of place of trial, 46-13-203 through 46-13-205;

~~(k)~~(k) reasonableness of bail, Title 46, chapter 9; and

~~(m)~~(l) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary.”

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

46-13-109. Notice by prosecutor of other crimes, wrongs, or acts.

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

Approved April 7, 2011

CHAPTER NO. 131

[HB 298]

AN ACT PROVIDING A DEFINITION OF "STEERING AXLE" FOR THE PURPOSES OF GROSS VEHICLE WEIGHT REQUIREMENTS; AND AMENDING SECTION 61-10-104, MCA.

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

Section 1. Section 61-10-104, MCA, is amended to read:

"61-10-104. Length — definitions. (1) A single truck, bus, or self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 55 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length or 61 feet in combined trailer length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), and this combination may not have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturer's rated capacity" may not tow more than one trailer or semitrailer, and this combination may not have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck tractor and one pole trailer or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection (5)(a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124(2), does not apply to the vehicle combination described in this subsection (5)(a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination hauling utility poles.

(6) As used in this chapter, the following definitions apply:

(a) "Axle" means a transverse beam that is the common axis of rotation of one or more wheels and that, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

(b) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(c) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

(d) "Length", except as provided in subsection (5)(a), means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(e) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer.

(f) "*Steering axle*" means an axle that pivots at the hub to allow the wheel to follow the travel of the vehicle. A steering axle is capable of being steered but need not always be connected to a steering wheel."

Approved April 7, 2011

CHAPTER NO. 132

[HB 319]

AN ACT REQUIRING A PERSON BIDDING ON CERTAIN PUBLIC CONSTRUCTION CONTRACTS TO LIST THE PERSON'S SPECIAL FUEL USER'S PERMIT NUMBER ON THE BID, IF APPLICABLE.

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

Section 1. Listing special fuel permit number. If applicable, a person bidding on a construction contract for road, street, or bridge construction, repair, or maintenance under the provisions of this part shall list the person's special fuel user's permit number issued pursuant to Title 15, chapter 70, part 3, on the bid. A bid without the permit number may not be accepted.

Section 2. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 23, and the provisions of Title 7, chapter 5, part 23, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 43, and the provisions of Title 7, chapter 5, part 43, apply to [section 1].

(3) [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 6, and the provisions of Title 20, chapter 6, part 6, apply to [section 1].

(4) [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 1].

Approved April 7, 2011

CHAPTER NO. 133

[HB 324]

AN ACT REVISING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION AND PLAN; REDUCING THE NUMBER OF INSURANCE REJECTIONS OR RESTRICTIONS REQUIRED UNDER THE "ELIGIBLE PERSON" DEFINITION; INCREASING THE NUMBER OF PUBLIC MEMBERS OF THE ASSOCIATION BOARD; CHANGING PREMIUM LIMITS; INCREASING ELIGIBILITY FOR PREMIUM ASSISTANCE; INCREASING LIFETIME BENEFITS; AMENDING SECTIONS 33-22-1501, 33-22-1504, 33-22-1512, AND 33-22-1521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-22-1501, MCA, is amended to read:

"33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.

(5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.

(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.

(7) (a) "Eligible person" means an individual who:

(i) is a resident of this state and applies for coverage under the association plan;

(ii) is not eligible for any other form of health insurance coverage or health service benefits, except:

(A) for coverage consisting solely of excepted benefits, as defined in 33-22-140; or

(B) subject to eligibility limitations adopted pursuant to 33-22-1502(2), if the individual has coverage comparable to the association plan but is paying a premium or has received a renewal notice to pay a premium that is more than

150% of the average premium rate used to calculate the association plan premium rate pursuant to 33-22-1512(1); and

(iii) meets one or more of the following criteria:

(A) has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least ~~two insurers, societies, or health service corporations~~ *one insurer, society, or health service corporation*, unless the association waives this requirement; or

(B) has had a restrictive rider or preexisting conditions limitation, ~~which limitation is required by at least two insurers, societies, or health service corporations,~~ *one insurer, society, or health service corporation* that has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(b) The term does not apply to an individual who is certified as eligible for federal trade adjustment assistance or for pension benefit guaranty corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002, and is eligible for the association portability plan.

(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).

(9) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(10) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(11) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(12) “Lead carrier” means the licensed administrator or insurer selected by the association to administer the association plan.

(13) “Medicare” means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

(14) “Preexisting condition” means any condition for which an applicant for coverage under the association plan has received medical attention during the 3 years immediately preceding the filing of an application.

(15) “Qualified TAA-eligible individual” means an individual and any dependent of that individual, in addition to meeting the requirements specified in subsection (18):

(a) who has 3 months of prior creditable coverage;

(b) whose application for association portability plan coverage is made within 63 days following termination of the applicant’s most recent prior creditable coverage; and

(c) who, if eligible for COBRA, is not required to elect or exhaust continuation coverage under the COBRA continuation provision or under a similar state program.

(16) “Resident” means an individual who has been legally domiciled in this state for a period of at least 30 days, except that for a federally defined eligible individual there is no 30-day requirement. The criteria for determining residency must be specified in the association’s operating rules.

(17) “Society” means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

(18) “TAA-eligible individual” means an individual and any dependent of that individual enrolling in the association portability plan:

(a) who is a resident of this state on the date of application to the pool;

(b) who has been certified as eligible for federal trade adjustment assistance and a health insurance tax credit or for pension benefit guaranty corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002;

(c) who does not have other health insurance coverage; and

(d) who is not covered under a group health plan maintained by an employer, including a group health plan available through a spouse, if the employer contributes 50% or more to the total cost of coverage.”

Section 2. Section 33-22-1504, MCA, is amended to read:

“33-22-1504. Association board of directors — organization. (1) There is a board of directors of the association, consisting of ~~eight individuals~~ *nine members as follows:*

(a) *one member* from each of the five participating members of the association with the highest annual premium volume of disability insurance contracts, health maintenance organization health care services agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner;

(b) two members at large who must be participating members of the association, appointed by the commissioner; and

(c) ~~a member~~ *two members* at large, appointed by the commissioner to represent the public interest.

(2) *The public interest board members provided for in subsection (1)(c) must be enrolled in a Montana comprehensive health association plan at the time of appointment.*

~~(2)~~(3) The public interest board ~~member~~ *is members* are entitled to one board vote *each*. Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume. However, a board member may not have more than 50% of the vote.

~~(3)~~(4) Members of the board may be reimbursed from the money of the association for expenses incurred by them because of their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and ~~its~~ *reimbursing its* board of directors must be borne by participating members of the association in accordance with 33-22-1513.

~~(4)~~(5) The commissioner may replace a board member if the commissioner determines that the board member is not actively participating in the affairs of the board or if the participating member does not appoint a board representative within a reasonable time period. A board member appointed under subsection (1)(a) must be replaced by a participating member of the association with the next highest annual Montana premium volume of disability insurance contracts, health maintenance organization health care service agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner.

~~(5)~~(6) The commissioner shall include the applicable premium volume of all affiliates, as defined in 33-2-1101, in making the determination required by subsection (1)(a) or ~~(4)~~ (5)."

Section 3. Section 33-22-1512, MCA, is amended to read:

"33-22-1512. Association plan and association portability plan premium. (1) The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of association plan premiums for eligible persons may not exceed ~~200%~~ 150% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The schedule of association portability plan premiums for federally defined eligible individuals may not at any time exceed 150% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The premium rates of the five insurers or health service corporations used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually at the request of the commissioner. The association shall use generally acceptable actuarial principles and structurally compatible rates.

(2) (a) The association, with the approval of the commissioner, may adopt a reduced premium rate schedule that is equitably proportional to the income level for eligible persons who have an income less than or equal to ~~150%~~ 200% of the federal poverty level. The association may not adopt a reduced premium rate schedule unless it has secured federal, state, or private funding specifically for that purpose and the use of the reduced premium rate schedule is limited to the available federal, state, or private funding.

(b) The association, with the approval of the commissioner, may adopt as many income categories as it finds necessary.

(c) Any person who qualifies for coverage under this section may apply to the association for a reduced premium. However, eligible persons with coverage in the traditional association plan must receive first priority for reduced premiums. By agreement of the association and the commissioner, reduced premiums may be made available to persons eligible for the portability plan.

(d) The association may grant as many reduced premiums as funding sources allow but may not increase overall premium rates to subsidize the reduced premium rate schedule. The association may limit the number of people receiving reduced premiums when funds are not available and may establish a waiting list for reduced premiums, if necessary.”

Section 4. Section 33-22-1521, MCA, is amended to read:

“33-22-1521. Association plan — minimum benefits. A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting 33-22-701 through 33-22-705), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) (a) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 50% of the covered expenses required by this section in excess of an annual deductible that does not exceed \$1,000 per person. The coverage must include a limitation of \$5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but the maximums may not be less than \$100,000.

(b) One association plan must be offered with coverage for 80% of the covered expenses provided in this section in excess of an annual deductible that does not exceed \$1,000 per person. This association plan must provide a maximum lifetime benefit of at least ~~\$500,000~~ *\$2 million*.

(c) Covered expenses for plans under subsection (1)(a) and (1)(b) must be paid as specified in provider contracts or, in the absence of a provider contract, at the prevailing charge in the state where the service is provided.

(d) The board may authorize other association plans, including managed care plans as defined in 33-36-103.

(2) Covered expenses for plans offered under subsections (1)(a) and (1)(b) must be for the following medically necessary services and articles when prescribed by a physician or other licensed health care professional and when designated in the contract:

- (a) hospital services;
- (b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;
- (c) use of radium or other radioactive materials;
- (d) oxygen;
- (e) anesthetics;
- (f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);
- (g) services of a physical therapist;
- (h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;
- (i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of durable medical equipment, which must be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of \$1,000;

(k) prosthetics, other than dental;

(l) services of a licensed home health agency, up to a maximum of 180 visits per year;

(m) drugs requiring a physician's prescription that are approved for use in human beings in the manner prescribed by the United States food and drug administration, covered at 50% of the expense, up to an annual maximum of \$2,000;

(n) medically necessary, nonexperimental transplants of the kidney, pancreas, heart, heart/lung, lungs, liver, cornea, and high-dose chemotherapy bone marrow transplantation, limited to a lifetime maximum of \$150,000, with an additional benefit not to exceed \$10,000 for expenses associated with the donor;

(o) pregnancy, including complications of pregnancy;

(p) newborn infant coverage, as required by 33-22-301;

(q) sterilization;

(r) immunizations;

(s) outpatient rehabilitation therapy;

(t) foot care for diabetics;

(u) services of a convalescent home, as an alternative to hospital services, limited to a maximum of 60 days per year;

(v) travel, other than transportation by a licensed ambulance service, to the nearest facility qualified to treat the patients medical condition when approved in advance by the insurer; and

(w) coverage for severe mental illness as required in 33-22-706.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) home and office calls, except as specifically provided in subsection (2);

(ii) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(iii) the first \$20 of diagnostic x-ray and laboratory charges in each 14-day period;

(iv) oral surgery, except as specifically provided in subsection (2);

(v) that part of a charge for services or articles that exceeds the prevailing charge in the state where the service is provided; or

(vi) care that is primarily for custodial or domiciliary purposes that would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition, except as provided by subsection (2);

(iv) confinement in a private room to the extent that ~~it is in excess of the institution's~~ *the charge exceeds the facility's* charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles ~~the provision of which is~~ *that are* not within the scope of authorized practice of the ~~institution~~ *facility* or individual rendering the services or articles;

(vi) room and board for a nonemergency admission on Friday or Saturday;

(vii) routine well baby care;

(viii) complications to a newborn, unless no other source of coverage is available;

(ix) reversal of sterilization;

(x) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xi) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xii) artificial insemination or treatment for infertility; or

(xiii) breast augmentation or reduction.”

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

Approved April 7, 2011

CHAPTER NO. 134

[HB 337]

AN ACT REVISING DEFINITIONS RELATED TO FISH AND GAME VIOLATIONS; AND AMENDING SECTIONS 87-1-513, 87-2-101, 87-2-114, AND 87-2-807, MCA.

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

Section 1. Section 87-1-513, MCA, is amended to read:

“87-1-513. Disposition of proceeds of sale. (1) The money obtained upon the sale of seized property must be retained and accounted for by the department when the person having the property in possession at the time of seizure is prosecuted or when a prosecution of the person is pending. If the person charged with ~~violation of the violating fish and game law is found guilty of or forfeits bond for violation of the fish and game laws of the state~~ *convicted or forfeits bond or bail*, the money received for the sale of seized property must be paid ~~over~~ to the state treasurer and be deposited to the credit of the fish and game fund; except as provided in subsection (2). If the party from whom the property was taken is not found guilty ~~of any violation of the fish and game laws of this state~~, the money must be paid to the party from whom the game birds, wild animals, fish, or parts or portions thereof were taken. An officer is not liable for any damage ~~on account of~~ *caused by* any search, examination, seizure, or sale. When wild animals, game birds, or fish are seized as provided in this part and the person or persons who killed or captured the wild animals, game birds, or fish cannot be ascertained or when the animals sold were killed pursuant to 87-1-225, then the money received from the sale of the wild animals, game birds,

or fish must be paid directly to the state treasurer. The cost of advertising notice of sale, as required by 87-1-511, must be paid from the fish and game fund.

(2) The proceeds, after the department's cost of conducting the sale and costs incurred in donating game animal meat are deducted, from the sale of seized game animal meat must be deposited in the state special revenue fund to the credit of the department of public health and human services for the purposes of awarding grants to the Montana food bank network in this state. Money from the grants awarded to the Montana food bank network must be used for the processing of donated game animal meat. Any grant funds remaining after donated game animal meat is processed may be used for other appropriate purposes by the Montana food bank network."

Section 2. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in ~~87-1-102, chapter 3, and this chapter Title 87, chapters 1 through 3,~~ unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(4) "Commission" means the state fish, wildlife, and parks commission.

(5) "*Conviction*" means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated.

~~(5)~~(6) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

~~(6)~~(7) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(7)~~(8) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); the species perca flavescens (yellow perch); all species of the genus pomoxis (crappie); and the species ictalurus punctatus (channel catfish).

~~(8)~~(9) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any

location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(9)~~(10) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves.

~~(10)~~(11) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(11)~~(12) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(12)~~(13) "Person" means individuals, associations, partnerships, and corporations.

(14) "*Possession*" has the meaning provided in 45-2-101.

~~(13)~~(15) "Predatory animals" means coyote, weasel, skunk, and civet cat.

~~(14)~~(16) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(15)~~(17) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(16)~~(18) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 3. Section 87-2-114, MCA, is amended to read:

"87-2-114. Misdemeanor and felony possession of hunting or fishing license or permit — penalties. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of a hunting or fishing license or permit if the person knowingly, as defined in 45-2-101, carries or has physical control over a valid and unused:

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit;

(b) resident hunting license or permit or resident fishing license or permit issued to a nonresident; or

(c) hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly obtained and validated license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor and is punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to

another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued or by knowingly, as defined in 45-2-101, carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule, is guilty of a felony and upon conviction shall be fined not more than \$50,000; *or be* imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section ~~or who pleads guilty to a violation of this section~~ shall ~~lose~~ *forfeit* all hunting, fishing, and trapping permit and license privileges for not less than 3 years ~~or~~ up to a ~~lifetime~~ *revocation for life* from the date of conviction.”

Section 4. Section 87-2-807, MCA, is amended to read:

“87-2-807. Taking migratory game birds for propagation — avicultural permit. (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101(9), for the purpose of propagation. Before issuing an avicultural permit, the department shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

- (a) the species of migratory game birds allowed to be taken under the permit;
- (b) whether eggs or hatched birds, or both, may be taken;
- (c) the number of eggs or hatched birds, or both, that may be taken;
- (d) areas in which collection may be made;
- (e) means by which collection may be made;
- (f) the time period for which the permit is valid; and
- (g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates the migratory game birds, and the owner may sell or transfer the birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing the permit.

(5) The department shall adopt rules implementing this section.”

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].

Approved April 7, 2011

CHAPTER NO. 135

[HB 338]

AN ACT REVISING STANDARDS AND FEES FOR DOCUMENTS SUBMITTED TO COUNTY CLERKS FOR RECORDING; AND AMENDING SECTIONS 7-4-2636 AND 7-4-2637, MCA.

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

Section 1. Section 7-4-2636, MCA, is amended to read:

“7-4-2636. Standards for recorded documents — exemptions. (1) Unless accompanied by the appropriate fee required in 7-4-2637, a document submitted for recording that conveys an interest in real property must:

(a) be legibly printed or typed in *blue or black ink in at least 10-point typeface on white paper of not less than 20-pound weight, each page of which must be separated and have dimensions of that is either 8 1/2 x 11 inches or 8 1/2 x 14 inches in size;*

(b) ~~provide the names of the parties to the conveyance on the first or second page of any document with more than one page; provide the names of the parties to the conveyance on the first or second page of any document with more than one page;~~

(c) provide a description of the property *if the document conveys an interest in real property;*

(d) have all signatures, initials, dates, or handwriting, ~~or notary stamps~~ in blue or black ink;

(e) ~~except as provided in subsection (1)(f) and except for page numbers or other designations; except as provided in subsection (1)(f) and except for page numbers, initials, or other designations,~~ have margins that are clear of all markings in the following dimensions:

(i) at least 3 inches at the top of the first page and at least 1 inch at the top of the second and any subsequent pages;

(ii) at least 1 inch on the bottom of each page;

(iii) at least 1/2 inch on the sides of each page; ~~and; and~~

(f) ~~include the name and mailing address of the person to whom the document is to be returned in the margin in the upper left-hand corner of the first page within the 3-inch top margin and between the 1/2-inch side margins of each document submitted and may include legibly printed or typed transactional information~~

(f) *include the name and mailing address of the person to whom the document is to be returned in the upper left-hand corner of the first page between the 1/2-inch side margins of each document submitted and may include legibly printed or typed transactional information.*

(2) ~~Unless accompanied by the fee required in 7-4-2637, all other documents submitted for recording must meet the requirements of subsections (1)(a), (1)(e), and (1)(f).~~

(3)(a) Except as provided in subsection (3)(b) (2)(b), only documents submitted for recording and filing that conform to the provisions of ~~subsection (1) or (2) this section~~ are considered standard documents for the purposes of 7-4-2637.

(b) Documents that are acknowledged as having been executed prior to April 28, 2007, must be accepted for recording and considered standard documents, regardless of whether they conform to the provisions of ~~subsection (1) or (2) this section.~~

(4)(3) (a) An acknowledgment by a notary is exempt from the color, ~~typeface,~~ and ~~margin font~~ requirements of this section. *Page numbers, the name and mailing address of the person to whom the document is to be returned, and other administrative information or designations may appear in the margins.*

(b) An officially certified court or other government document, whether from an in-state or out-of-state office, is exempt from the provisions of this section.”

Section 2. Section 7-4-2637, MCA, is amended to read:

“7-4-2637. Fees for recording standard documents. (1) Except as provided in 7-4-2631 and subsection (2) of this section, the fee for recording a standard document that meets the requirements of 7-4-2636 is \$7 for each page or fraction of a page.

(2) The fee for recording a document that does not meet the requirements of 7-4-2636 is \$11 for each page or fraction of a page for the first five pages or fractions of the pages and \$7 for each subsequent page the fee specified in subsection (1) plus \$10.

(3) (a) Of the fees collected under subsection (1):

(i) \$1 must be deposited in the records preservation fund, provided for in 7-4-2635;

(ii) 25 cents must be deposited in the county land information account provided for in 7-6-2230;

(iii) 75 cents must be transmitted each month to the department of revenue in the manner prescribed by the department of revenue for deposit in the Montana land information account created in 90-1-409; and

(iv) the remainder must be deposited as provided for in 7-4-2511.

(b) ~~Of the The fees collected under subsection (2) for nonstandard documents, each \$7 amount for a page or fraction of a page must be deposited as provided for in subsection (3)(a). The remaining \$4 of each \$11 charge for a page or fraction of a page must be deposited in the records preservation fund, provided for in 7-4-2635, and, notwithstanding 7-4-2635(3), each \$4 amount from an \$11 charge for a page or a fraction of a page may be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents.”~~

Approved April 7, 2011

CHAPTER NO. 136

[HB 401]

AN ACT REVISING THE DEFINITION OF “ROTATION AREA” IN THE MONTANA PROFESSIONAL TOW TRUCK ACT; AND AMENDING SECTION 61-8-903, MCA.

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

Section 1. Section 61-8-903, MCA, is amended to read:

“61-8-903. Definitions. As used in this part, the following definitions apply:

(1) “Boom” means an engineered structure that is either mechanically or hydraulically operated and that is capable of lifting and supporting an overhead, vertical load.

(2) “Commercial tow truck operator” or “operator” means a person, firm, or other entity that owns or operates a commercial tow truck as defined in 61-9-416.

(3) “Department” means the department of justice provided for in 2-15-2001.

(4) “Local government” means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

(5) (a) "Qualified tow truck operator" means a commercial tow truck operator:

(i) that has equipment that:

(A) meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

(B) has been classified in accordance with 61-8-905;

(ii) that participates in the law enforcement rotation system provided for in 61-8-908; and

(iii) that meets the requirements of subsection (5)(b).

(b) (i) If the operator is a firm or other entity, at least 75% of the employees who operate a tow truck must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(ii) If the operator is an individual, the individual must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(6) "Rotation area" means the base area where a qualified tow truck operator is dispatched and operates. ~~For class C tow truck operators, a rotation area includes at least the entire county in which the operation is located but may be expanded to other counties.~~

(7) "Satellite operation" means a second or subsequent operation in another rotation area."

Approved April 7, 2011

CHAPTER NO. 137

[HB 403]

AN ACT ELIMINATING THE REQUIREMENT THAT LOCAL OPTION CLUSTER DEVELOPMENT AND OPEN SPACE REGULATIONS MANDATE THAT OPEN SPACE IN CLUSTER DEVELOPMENTS MUST SOLELY BE PRESERVED THROUGH AN IRREVOCABLE COVENANT; AMENDING SECTIONS 70-17-203 AND 76-3-509, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 70-17-203, MCA, is amended to read:

"70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; ~~and~~

(b) conservation easements pursuant to 76-6-209; *or*

(c) *a dedication of open space as provided in 76-3-509.*

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the

covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 2. Section 76-3-509, MCA, is amended to read:

"76-3-509. Local option cluster development regulations and exemptions authorized. (1) If the governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

- (a) establish a maximum size for each parcel in a cluster development;
- (b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and
- (c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. *Land protected as open space on a long-term basis must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels, as provided in Title 70, chapter 17, part 2. The regulations must require that open space be preserved through an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76, chapter 6, prohibiting further division of the parcel.*

(3) Regulations adopted under this section may:

- (a) establish a shorter timeframe for review of proposed cluster developments;
 - (b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;
 - (c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;
 - (d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and
 - (e) establish exemptions from the following:
 - (i) the requirements of an environmental assessment pursuant to 76-3-603;
 - (ii) review of the criteria in 76-3-608(3)(a); and
 - (iii) park dedication requirements pursuant to 76-3-621.
- (4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions."

Section 3. Effective date. [This act] is effective July 1, 2011.

Approved April 7, 2011

CHAPTER NO. 138

[HB 432]

AN ACT ALLOWING BANKS AND CREDIT UNIONS TO OFFER DEBT CANCELLATION OR SUSPENSION PROGRAMS IF AUTHORIZED BY THE DEPARTMENT OF ADMINISTRATION; REQUIRING THE DEPARTMENT TO ADOPT RULES GOVERNING DEBT CANCELLATION AND

SUSPENSION PROGRAMS; PROVIDING THAT DEBT CANCELLATION AND SUSPENSION PROGRAMS OFFERED BY BANKS AND CREDIT UNIONS ARE NOT INSURANCE PRODUCTS SUBJECT TO THE MONTANA INSURANCE CODE; AND AMENDING SECTIONS 32-1-429 AND 32-3-609, MCA.

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

Section 1. Section 32-1-429, MCA, is amended to read:

“32-1-429. Insurance activities — exemption — rulemaking. (1) A bank or a bank’s subsidiary or affiliate may:

(a) except for title insurance, sell insurance of all types, including annuities, credit life insurance, and disability insurance; and

(b) act as an insurance producer, adjuster, consultant, or administrator as defined in Title 33, chapter 17.

(2) A bank or a bank’s subsidiary or affiliate that engages in insurance activities authorized in subsection (1) is subject to the provisions of Title 33.

(3) *A bank or bank’s subsidiary or affiliate may, upon application to and approval by the department pursuant to 32-1-362, offer debt cancellation and suspension programs. Debt cancellation or suspension programs offered pursuant to this subsection are not insurance products subject to the provisions of Title 33. The department shall adopt rules to implement this subsection that must be substantially equivalent to or more stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or suspension programs offered by national banks.*

Section 2. Section 32-3-609, MCA, is amended to read:

“32-3-609. Insurance for members — debt cancellation and suspension programs. (1) A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances or to any combination of them.

(2) *A credit union may, upon application to and approval by the department of administration pursuant to 32-3-206, offer debt cancellation and suspension programs. Debt cancellation or suspension programs offered pursuant to this subsection are not insurance products subject to the provisions of Title 33. The department shall adopt rules to implement this subsection that must be substantially equivalent to or more stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or suspension programs offered by federal credit unions.*

Approved April 7, 2011

CHAPTER NO. 139

[HB 449]

AN ACT REVISING PENALTIES FOR THE INTENTIONAL, UNLAWFUL IMPORTATION, INTRODUCTION, AND TRANSPLANTATION OF FISH; AND AMENDING SECTION 87-5-721, MCA.

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

Section 1. Section 87-5-721, MCA, is amended to read:

“87-5-721. Penalty — license and permit revocation and denial. (1) Except as provided in subsection (2), a person ~~who violates a provision~~ *convicted of a violation* of this part is guilty of a misdemeanor punishable as provided in

87-1-102, and *In addition*, the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than ~~\$500~~ *\$2,000* or more than ~~\$5,000~~ *\$10,000* and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend ~~\$500~~ *\$2,000* of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued ~~under this title by this state~~ and the privilege to hunt, fish, or trap in this state for not less than ~~24 months~~ *5 years or more than 10 years*. If the time necessary to eliminate or mitigate the effects of the violation exceeds ~~24 months~~ *the imposed forfeiture period*, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for ~~more than 24 months~~ *an additional period of time*. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for ~~the lifetime of that person life~~.

(3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within a time set by the department, not to exceed 6 months. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife.”

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

Approved April 7, 2011

CHAPTER NO. 140

[HB 467]

AN ACT EXPANDING THE INDIVIDUAL INCOME TAX AND CORPORATE LICENSE TAX CREDIT FOR CONTRIBUTIONS TO FOUNDATIONS AND ENDOWMENT FUNDS OF A UNIVERSITY OR COLLEGE TO INCLUDE FOUNDATIONS AND ENDOWMENT FUNDS OF COMMUNITY COLLEGES, TRIBAL COLLEGES, AND UNITS OR CAMPUSES OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 15-30-2326,

15-31-135, 15-31-136, AND 20-26-603, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-30-2326, MCA, is amended to read:

“15-30-2326. Credit for contributions to university system or private college foundations and endowment funds. (1) (a) An individual, corporation, partnership, or small business corporation, as defined in 15-30-3301, is allowed a tax credit against taxes imposed by 15-30-2103 or 15-31-101 in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to a *foundation or a general endowment fund* of:

(i) ~~any of the general endowment funds of the Montana university system or any unit or campus of the Montana university system;~~

(ii) ~~foundations or a general endowment fund of a Montana private college or its foundation;~~

(iii) *a Montana community college that is part of a community college district defined and organized as provided in 20-15-101; or*

(iv) *a tribal college located in Montana that meets the requirements of 25 U.S.C 1804.*

(b) The maximum credit that a taxpayer may claim in a year under this section is \$500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) 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.

(3) (a) For the purposes of this section, “foundation” means a nonprofit organization that is created exclusively for the benefit of any unit of the Montana university system, ~~or a Montana private college,~~ *a community college, or a tribal college* and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(b) For the purposes of this section, “Montana private college” means a nonprofit private educational institution:

(i) whose main campus and primary operations are within the state; and

(ii) that offers *education on the level of an associate degree or a baccalaureate degree level education* and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education.”

Section 2. Section 15-31-135, MCA, is amended to read:

“15-31-135. Contribution by small business corporation. A contribution to a *foundation or a general endowment fund of the Montana university system or a Montana private college by a small business corporation,* as defined in 15-30-3301, *certain universities and colleges by a small business corporation* qualifies for the credit ~~in~~ *under the provisions of 15-30-2326.* The credit must be attributed to shareholders, using the same proportion used to report the corporation's income or loss for Montana income tax purposes.”

Section 3. Section 15-31-136, MCA, is amended to read:

“15-31-136. Contribution by partnership. A contribution to a *foundation or a general endowment fund of the Montana university system or a Montana private college* *certain universities and colleges* by a partnership qualifies for the credit ~~in~~ *under the provisions of 15-30-2326.* The credit must be

attributed to partners, using the same proportion used to report the partnership's income or loss for Montana tax purposes."

Section 4. Section 20-26-603, MCA, is amended to read:

"20-26-603. Definitions. As used in this part, the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

(3) "Council" means the governor's postsecondary scholarship advisory council created in 2-15-1524.

(4) "Montana private college" means a nonprofit private educational institution ~~as defined in 15-30-2326(3)(b):~~

(a) *with its main campus and primary operations located within the state; and*

(b) *that offers education on the level of a baccalaureate degree and is accredited for that purpose by a national or regional accrediting agency recognized by the board.*

(5) "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal community college located in the state of Montana.

(6) "Scholarship" means a payment toward the cost of attendance at a qualifying postsecondary institution, rounded up to the nearest dollar.

(7) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Applicability. [This act] applies to tax years beginning after December 31, 2011.

Approved April 7, 2011

CHAPTER NO. 141

[HB 481]

AN ACT DESIGNATING REGIONAL WATER AUTHORITIES AS PUBLIC ENTITIES FOR THE PURPOSE OF ACQUIRING RIGHTS-OF-WAY ON CERTAIN STATE LANDS; AND AMENDING SECTIONS 77-2-103 AND 77-2-351, MCA.

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

Section 1. Section 77-2-103, MCA, is amended to read:

"77-2-103. Processing of application. (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state.

The compensation must be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages must be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat is the official plat of the right-of-way and must be retained in the office of the department.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or the purchaser's assignee must be made a party to the proceedings and the purchaser's or assignee's consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages must be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, must be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

(3) *If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the provisions of 77-2-351 related to public entities apply.*

Section 2. Section 77-2-351, MCA, is amended to read:

“77-2-351. Sale to or exchange of property with public entity. Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. In the case of land that is not granted to or held by the state in trust for the support of the common schools, for a state institution, or for another specific purpose, the board may accept as partial or total consideration for the transfer of the land a binding commitment by the transferee to use the property to provide a community service or a benefit that fulfills a public purpose. The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given. As used in this section, “public entity” means any county, city, municipal corporation, school district, *regional water authority provided for in Title 75, chapter 6, part 3*, or special improvement or taxing district.”

Approved April 7, 2011

CHAPTER NO. 142

[HB 517]

AN ACT REVISING WEIGHT REQUIREMENTS FOR WEIGH STATIONS;
AND AMENDING SECTION 61-10-141, MCA.

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

Section 1. Section 61-10-141, MCA, is amended to read:

“61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — definition. (1) (a) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110, except recreational vehicles, travel trailers, or motor homes, by

means of either portable scales used on an engineered site or stationary scales. The peace officer, officer of the highway patrol, or employee of the department of transportation may require that the vehicle be driven to the nearest stationary scales or engineered site for use of portable scales if those stationary scales or an engineered site is within 2 miles.

(b) If it is determined in the weighing process that the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 have been exceeded, the peace officer, officer of the highway patrol, or employee of the department of transportation may then require the driver to unload at a designated facility that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

(2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or material unloaded as required by this section may not be left on the highway right-of-way.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require *all trucks and commercial motor vehicles, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer, of 26,000 pounds GVW or greater* to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews when the portable scales are used on an engineered site.

(4) For the purposes of this section, "engineered site" means:

(a) a turnout designed and constructed by the department of transportation that has indents in the pavement to level portable scales; or

(b) a site where leveling pads can be used in strict accordance with all of the manufacturer's manuals and specifications."

Approved April 7, 2011

CHAPTER NO. 143

[HB 523]

AN ACT GENERALLY REVISING THE MONTANA PROFESSIONAL TOW TRUCK ACT; REQUIRING A LETTER OF APPOINTMENT TO PARTICIPATE IN THE LAW ENFORCEMENT ROTATION SYSTEM; PROVIDING REQUIREMENTS FOR A TOW TRUCK OPERATOR TO RECEIVE A LETTER OF APPOINTMENT; REVISING EXISTING DEPARTMENT RULEMAKING AUTHORITY; AND AMENDING SECTIONS 61-8-903, 61-8-904, AND 61-8-908, MCA.

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

Section 1. Letter of appointment — requirements. (1) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 without a letter of appointment from the department.

(2) The department may assign a letter of appointment to a commercial tow truck operator if the operator meets the following requirements:

(a) Each towing business must be operated independently. One company cannot be dependent on another for any required operation.

(b) If the operator owns more than one towing business, each business must have a different identifiable name, address, and telephone number that is answered at the business location during normal business hours. An after-hours central dispatch center may receive calls for multiple businesses if the dispatch center is capable of acknowledging each individual call by the applicable company name.

(c) The operator shall provide adequate staffing for each business with personnel who are present at the business location to answer all incoming calls and who are able to release impounded vehicles from 8 a.m. to 5 p.m., Monday through Friday, except for state-recognized holidays. In addition, each business location must be staffed by a sufficient number of drivers for a 24-hour a day operation.

(d) There must be adequate equipment for each company to operate independently. Tow trucks may only be used for the company for which they are registered and within the rotation area for which they are approved by the department unless otherwise specifically provided for by the department.

(e) The operator must have a business location with its own outside entrance, or if a building has one main entrance, the location must have doors clearly marking and separating each business with a sign at the front door and a sign plainly visible from the street indicating the company's name, telephone number, and office hours. Separate businesses in the same rotation area may be housed in one building, but there must be a solid wall from floor to ceiling to separate each business.

(f) Each company shall maintain its own set of required records and books, including but not limited to a vehicle transaction file and billing invoices at its business location. If there is a corporate accountant or bookkeeper for more than one company, all records and files for each company that are required to be maintained at the business location must be maintained separately.

(g) The operator must have impound and storage areas at the business location and in the operator's assigned rotation area that meet the requirements of 61-8-906(3).

(h) The operator shall maintain at least one truck meeting the minimum classification standards set out in 61-8-905.

(3) A qualified tow truck operator may have only one letter of appointment for a business location in a single rotation area. A request for an additional letter of appointment must be for a complete and separate business location that is capable of operating independently within the same or another rotation area and that meets the requirements of subsection (2).

(4) Each letter of appointment must specify the rotation area to which the qualified tow truck operator is assigned.

(5) A commercial tow truck operator may petition the department in writing for a waiver of one or more of the requirements of subsection (2). Except as provided in subsection (6), the department may grant a waiver if it finds that:

(a) the towing service otherwise available within the rotation area is inadequate to meet the needs of the public;

(b) the request has the highway patrol district commander's approval; and

(c) the petition is otherwise reasonable.

(6) In the event a commercial tow truck operator meets all the requirements of this section and receives a letter of appointment in the same rotation area as a qualified tow truck operator that had earlier been granted a waiver pursuant to subsection (5), the department shall rescind the waiver.

(7) A letter of appointment must be issued in the name of the applicant and is not transferable to any other person or business.

(8) A letter of appointment is valid until suspended, superseded, or revoked by the department.

Section 2. Section 61-8-903, MCA, is amended to read:

“61-8-903. Definitions. As used in this part, the following definitions apply:

(1) “Boom” means an engineered structure that is either mechanically or hydraulically operated and that is capable of lifting and supporting an overhead, vertical load.

(2) “Commercial tow truck operator” or “operator” means a ~~person, firm, an individual, partnership, corporation,~~ or other *business* entity that owns or operates a commercial tow truck as defined in 61-9-416.

(3) “Department” means the department of justice provided for in 2-15-2001.

(4) “*Letter of appointment*” means a letter granted by the department pursuant to [section 1] that authorizes the holder to participate in the law enforcement rotation system provided for in 61-8-908.

~~(4)~~(5) “Local government” means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

~~(5)~~(6) (a) “Qualified tow truck operator” means a commercial tow truck operator:

(i) that has equipment that:

(A) meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

(B) has been classified in accordance with 61-8-905;

(ii) that participates in the law enforcement rotation system provided for in 61-8-908; ~~and~~

(iii) that meets the requirements of subsection ~~(5)(b)~~ (6)(b); and

(iv) that has been issued a letter of appointment pursuant to [section 1].

(b) (i) If the operator is a firm or other entity, at least 75% of the employees who operate a tow truck must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(ii) If the operator is an individual, the individual must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

~~(6)~~(7) “Rotation area” means the base area where a qualified tow truck operator is dispatched and operates. For class C tow truck operators, a rotation area includes at least the entire county in which the operation is located but may be expanded to other counties.

(7) ~~“Satellite operation” means a second or subsequent operation in another rotation area.”~~

Section 3. Section 61-8-904, MCA, is amended to read:

“61-8-904. Prohibition — exception. (1) A commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operator complies with the provisions of 61-8-906(1) and 61-8-907.

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of this part.

(3) Sections 61-8-901 through 61-8-908, ~~and 61-8-910, and [section 1]~~ do not apply to a commercial tow truck operator that does not operate for compensation.”

Section 4. Section 61-8-908, MCA, is amended to read:

“61-8-908. State law enforcement rotation system — letter of appointment — local government rotation system. (1) The department shall establish and maintain an equitable rotation system among qualified tow truck operators that apply to the department in writing to be placed on the system *and receive a letter of appointment under [section 1]*. The rotation system:

(a) must be administered by the highway patrol in a manner that will give priority to public safety;

(b) must be based on the classification of equipment as provided in 61-8-905; and

(c) may include only qualified tow truck operators.

(2) Each qualified tow truck operator participating in the rotation system shall have available and show upon the request of a law enforcement officer:

(a) all Montana motor vehicle identification numbers or department of transportation numbers for the operator’s tow trucks operating in the rotation system;

(b) the operator’s federal tax identification number; and

(c) the operator’s company phone number and street address; and

(d) the operator’s letter of appointment as issued under [section 1].

(3) *The operator shall display on both sides of each tow truck the operator’s business name, location, and the numbers required by subsection (2)(a). The information required by this subsection must be plainly seen and able to be read at all times.*

~~(3) (a) If more than one qualified tow truck operator using a single storage or impoundment facility applies to be placed on the rotation system, the operators shall provide to the complaint resolution committee established in 61-8-912 information regarding each operator’s individual accounting system, the information required in subsection (2), and proof that each operator has the insurance required in 61-8-906.~~

~~(b) Based on the information provided to it pursuant to subsection (3)(a), the complaint resolution committee shall, upon written request, verify that operators using a single storage or impoundment facility applying to be placed on the rotation system have individual accounting systems, adequate identification information, and individual insurance policies.~~

~~(4) Only one qualified tow truck operation for each owner may be included on a rotation area list.~~

~~(5) (a) An owner of a qualified tow truck operation who has an existing tow truck operation in a rotation area separate from the rotation area where the owner is participating in the rotation system may establish a satellite operation to be included on a rotation area list if:~~

- ~~(i) the owner has a business office in the second rotation area;~~
- ~~(ii) the business office is open and accessible from 8 a.m. to 5 p.m. Monday through Friday;~~
- ~~(iii) the facilities have a secure yard as provided in 61-8-906(3)(e); and~~
- ~~(iv) the tow truck operation has a local 24-hour phone number.~~

~~(b) Any charges for towing service from the satellite operation must be calculated from the satellite operation area and not the area of the owner's base operation.~~

~~(4) Any charges for towing service must be calculated from the operator's business location, as it is assigned on the operator's letter of appointment.~~

~~(6)(5) The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle obstructing a public roadway requests a tow truck operator of the owner's or driver's choice and the operator meets the insurance requirements provided in 61-8-906 and the safety inspection requirements provided in 61-8-907.~~

~~(7)(6) (a) (i) The law enforcement officer at the scene of the wreck shall call the qualified tow truck operator that is next on the rotation list if:~~

- ~~(A) a request for a tow truck is not made by the owner or driver;~~
- ~~(B) the requested tow truck cannot respond in a timely manner; or~~
- ~~(C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked or disabled vehicle.~~

~~(ii) If the qualified tow truck operator is not classified to handle the wrecked or disabled vehicle, the officer shall call the qualified tow truck operator next on the rotation list that is classified to handle the wrecked or disabled vehicle.~~

~~(b) If a qualified tow truck operator classified to handle the wrecked or disabled vehicle is not reasonably available, the law enforcement officer may request other equipment to remove the hazard.~~

~~(8)(7) The department shall administer the state law enforcement rotation system. A qualified tow truck operator may examine the rotation system schedule established by the department in order to determine if the system is being administered in an equitable manner.~~

~~(9)(8) A qualified tow truck operator gives implied consent to a reasonable inspection during normal business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or a local government to ensure compliance with this part.~~

~~(10)(9) A local law enforcement agency may adopt and administer a local law enforcement rotation system that complies with the provisions of this part. A tow truck operator desiring to be placed on the local law enforcement rotation system must be a qualified tow truck operator as provided in this part.~~

~~(11)(10) The highway patrol or local law enforcement shall provide upon request a record of rotation system calls for all classes of tow trucks.~~

~~(12)(11) Complaints about the rotation system must be referred in writing to the complaint resolution committee established in 61-8-912."~~

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [section 1].

Approved April 7, 2011

CHAPTER NO. 144

[HB 568]

AN ACT CLARIFYING LAWS RELATED TO THE DISPOSITION OF STATE-OWNED WATER PROJECTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; DIRECTING THE DEPARTMENT TO ATTEMPT TO DISPOSE OF THE CATARACT DAM PROJECT; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Cataract Creek Dam water project is a state water project operated by the Department of Natural Resources and Conservation as successor to the project originally constructed by and through the Montana State Water Conservation Board; and

WHEREAS, the State of Montana in the 1990s authorized the Department of Natural Resources and Conservation to transfer and dispose of components of various state water projects throughout Montana to water user associations interested in taking over the components of the projects; and

WHEREAS, the Cataract Creek Dam project was constructed in the 1950s by the State Water Conservation Board to supply water to irrigators below the dam and resulted in the Cataract Water Users Association being formed to contract with the Department to market and distribute the project's water; and

WHEREAS, the project has never been identified in previous disposal efforts as a project that could be disposed of to the users of the system; and

WHEREAS, the Cataract Water Users Association has expressed interest in taking over the project from the Department, if economically feasible, to own and operate the system, to make necessary repairs and improvements to the project so that water from the system could be used for the benefit of the users, and to address shortcomings with the project that have not been addressed by the state over the years during which the project has been owned by the Department or its predecessor.

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

Section 1. Section 85-1-211, MCA, is amended to read:

“85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges to provide at all times funds that are sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of the rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) (a) The department may sell, transfer to water users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way, easements, properties, or interests or otherwise take and receive the income or profit and revenue from property without regard to other laws providing for the disposition of state property. Except for a water project for which no water management contracts are managed by the department and for which no money is collected by the department, prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests. In the disposal of a project, the department shall comply with the provisions of 85-6-109 and shall give purchase preference to existing water users' associations operating and maintaining the project proposed for disposal.

(b) *Subject to the provisions of subsection (5)(a) the department shall attempt to dispose of the Cataract Creek Dam project by June 30, 2013.*

(6) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection of the project that the department considers necessary, entry to salvage or remove project property, and entry to make physical alterations to project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

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

Approved April 7, 2011

CHAPTER NO. 145

[HB 422]

AN ACT AUTHORIZING PERMIT CONTRACTORS UNDER THE METAL MINE RECLAMATION LAWS TO DIRECTLY INVOICE THE PERMIT APPLICANT; AMENDING SECTION 82-4-335, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material,

construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. Except as provided in subsection (2), a separate operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) *Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.*

(ii) *A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.*

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the

hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 2. Effective date. [This act] is effective on passage and approval.
Approved April 7, 2011

CHAPTER NO. 146

[HB 41]

AN ACT PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH DISCRETION TO DESIGNATE AN INDEPENDENT AUDITOR TO PERFORM AN AUDIT OF A LOCAL GOVERNMENT ENTITY; AND AMENDING SECTION 2-7-506, MCA.

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

Section 1. Section 2-7-506, MCA, is amended to read:

“2-7-506. Audit by independent auditor. (1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, in consultation with the board, shall adopt rules governing the:

- (a) criteria for the selection of the independent auditor;
- (b) procedures and qualifications for placing applicants on the roster;
- (c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and
- (d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department ~~shall~~ *may* designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity.”

Approved April 8, 2011

CHAPTER NO. 147

[HB 49]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION AND FOR BOND ISSUANCE COSTS; PROVIDING A STATUTORY APPROPRIATION TO THE

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION; CONDITIONING THE ISSUANCE OF THE BONDS AND THE APPROPRIATION ON RATIFICATION OF A WATER RIGHTS COMPACT BY THE BLACKFEET TRIBE, THE LEGISLATURE, AND THE CONGRESS OF THE UNITED STATES; AMENDING SECTIONS 17-7-502 AND 85-20-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Authorization of bonds — condition. (1) Subject to subsection (3) and upon request of the director of the department of natural resources and conservation, the board of examiners may issue and sell general obligation bonds in a principal amount not exceeding \$16.15 million, of which \$16 million is to pay the state's costs for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation as provided for in 85-20-1505 and no more than \$150,000 is to pay bond issuance costs.

(2) (a) Except as provided in subsection (2)(b), the proceeds from the bonds authorized under this section must be deposited in a bond proceeds subaccount created in the Blackfeet Tribe water rights compact infrastructure account provided for in 85-20-1505.

(b) The proceeds to pay bond issuance costs must be deposited into a state special revenue account.

(3) The bonds must be sold and issued pursuant to the provisions of Title 17, chapter 5, part 8.

(4) The bonds may not be issued or sold unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the Blackfeet Tribe, the legislature, and the Congress of the United States.

Section 2. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206;

44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; 85-20-1505; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 3. Section 85-20-1505, MCA, is amended to read:

"85-20-1505. Blackfoot Tribe water rights compact infrastructure account — use. (1) There is an account within the state special revenue fund called the Blackfoot Tribe water rights compact infrastructure account. The department shall administer the account.

(2) The Blackfoot Tribe water rights compact infrastructure account may be used only for water-related infrastructure projects within the exterior boundaries of the Blackfoot Indian reservation.

(3) Funds from this account may not be disbursed unless a water rights compact among the Blackfoot Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfoot Tribe.

(4) All interest and other income earned on money in the account must be deposited in the account.

(5) *All proceeds of the bonds authorized in [section 1] must be deposited in a bond proceeds subaccount established in the Blackfoot Tribe water rights compact infrastructure account.*

(6) *Subject to subsection (3), money in the Blackfoot Tribe water rights compact infrastructure account, including the proceeds of the bonds authorized in [section 1] deposited in the bond proceeds subaccount, are statutorily appropriated, as provided in 17-7-502, to the department of natural resources and conservation for the purpose of funding the state's portion of the cost of the Four Horns Project as provided for in the agreement between the Blackfoot Tribe of the Blackfoot Indian reservation and the state of Montana regarding Birch Creek water use, dated January 31, 2008, as may be amended."*

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to the Blackfeet Tribe.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, part 15, and the provisions of Title 85, chapter 20, part 15, apply to [section 1].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Two-thirds vote required. Because [section 1] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

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

Approved April 8, 2011

CHAPTER NO. 148

[HB 77]

AN ACT ELIMINATING THE PUBLISHING POLICY COMMITTEE; AMENDING SECTIONS 18-7-302 AND 18-7-306, MCA; AND REPEALING SECTIONS 2-15-1017, 18-7-303, AND 18-7-305, MCA.

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

Section 1. Section 18-7-302, MCA, is amended to read:

“18-7-302. Definitions. As used in this part, the following definitions apply:

(1) ~~The term “agency” as used herein includes~~ “Agency” means each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) ~~The term “committee” means the publishing policy committee created in 2-15-1017.~~

(3)(2) ~~The term “department” as used herein~~ “Department” means the department of administration provided for in Title 2, chapter 15, part 10.

(4)(3) ~~The term “public document” includes~~ “Public document” means any publication of a state *an* agency *that is* meant for dissemination to the public, but does not include educational materials published by a unit of the university system or the superintendent of public instruction, reports of the legislative auditor, travel promotion materials, standard forms, bid specifications, opinions of the attorney general, opinions of the supreme court, session laws, the Administrative Rules of Montana, *the* Montana Code Annotated, *or* regular periodical publications sold to the general public solely through subscription and newsstand sale, ~~or a publication specifically exempted by the publishing policy committee when inclusion of that publication under this part is not considered in the best interests of the state.”~~

Section 2. Section 18-7-306, MCA, is amended to read:

“18-7-306. Public disclosure of costs. ~~All~~ *Each* agency shall include a public disclosure of costs on all public documents. ~~caused to be printed by any~~

~~agency of state government shall~~ *The public disclosure must* contain the following statement, with required information inserted, to be printed on the exterior cover of the publication: "... copies of this public document were published at an estimated cost of \$... per copy, for a total cost of \$..., which includes \$... for printing and \$... for distribution." This statement ~~shall~~ *must* be printed in the same size type as the ~~body copy text~~ of the document and ~~shall~~ *must* be set in a box composed of a 1-point rule. ~~If the committee determines that~~ the cost of publication cannot be reasonably estimated at the time of publication, the publications ~~shall~~ *must* contain the following statement on the exterior cover in lieu of the statement concerning estimated cost: "This document printed at state expense. Information on the cost of publication ~~can~~ *may* be obtained by ~~writing~~ *contacting the* department of administration, Helena, Montana."

Section 3. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-1017. Publishing policy committee.

18-7-303. Duties of committee.

18-7-305. Printed matter prohibitions.

Approved April 8, 2011

CHAPTER NO. 149

[HB 102]

AN ACT REVISING AND CLARIFYING PROBATIONARY AND SUSPENDED DRIVER'S LICENSE PROVISIONS AND PROVISIONS RELATED TO DRIVER REHABILITATION CLASSES FOR OFFENSES OF DRIVING UNDER THE INFLUENCE; SPECIFYING DUI COURT AUTHORITY CONCERNING DRIVER'S LICENSES; AMENDING SECTIONS 61-2-302, 61-5-205, 61-5-208, AND 61-8-734, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Authorization of probationary license by DUI court — definition. (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under 61-8-401 or driving with excessive alcohol concentration under 61-8-406 is participating in a DUI court, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to 61-8-442 and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401 or 61-8-406 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration.

Section 2. Section 61-2-302, MCA, is amended to read:

“61-2-302. Establishment of driver rehabilitation and improvement program — participation by offending drivers. (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs. The programs may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver’s training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver’s license.

(2) Except when otherwise provided or restricted by statute, a person whose driver’s license is suspended or revoked by the department, *unless the suspension or revocation was for an offense under 61-8-401 or 61-8-406*, may participate in any driver rehabilitation and improvement program established under this section if the person’s license is:

(a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or

(b) revoked and the person has:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver’s license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person’s participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) If a person’s driver’s license has been surrendered before the person’s selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person’s agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation action must be terminated and the suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions. (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) any felony in the commission of which a motor vehicle is used;

(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

~~(a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more a driving offense under 61-8-401 or 61-8-406;~~

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

- (ii) 6 months for a second offense; and
- (iii) 1 year for a third or subsequent offense.”

Section 4. 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 61-2-302 *and 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) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, Subject to [section 1] 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 under 61-8-401 or 61-8-406, the department shall suspend the driver’s license or driving privilege of the person for a period of 6 months;~~

~~(ii) Upon upon receiving a report of a person’s conviction or forfeiture of bail or collateral not vacated for a second, third, or subsequent offense under 61-8-401 or 61-8-406 within 5 years of the first offense the time period specified in 61-8-734, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver’s license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course, treatment, or both, are completed.~~

~~(e) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.~~

~~(iii) upon receiving a report of a person’s conviction or forfeiture of bail or collateral not vacated for a third offense under 61-8-401 or 61-8-406 within the time period specified in 61-8-734, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver’s license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course, treatment, or both, are completed.~~

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the

suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 5. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, ~~61-2-302~~, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2, apply to [section 1].

Section 7. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 8, 2011

CHAPTER NO. 150

[HB 110]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION STATUTES; REQUIRING WORKERS' COMPENSATION INSURERS AND THEIR AGENTS TO PAY MEDICAL PROVIDERS ON A TIMELY AND APPROPRIATE BASIS AND PROVIDING PENALTIES ON THE INSURER FOR FAILURE TO DO SO; CLARIFYING THE GROUNDS ON WHICH AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE MAY BE REVOKED; CLARIFYING THAT INTEREST ON A SECURITY DEPOSIT ACCRUES TO THE INSURER; AMENDING SECTIONS 39-71-107, 39-71-418, AND 39-71-2215, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state claims examiners — *third-party agents* — *penalties*. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

(b) The department may assess a penalty not to exceed \$200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.

(5) (a) *Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer that uses a third-party agent to review medical bills shall, when first using the agent's services and annually in subsequent years, obtain written certification from the agent that, for each bill the agent reviews, the agent agrees to calculate the payment due based on the Montana workers' compensation medical fee schedules, provided for under 39-71-704, that were in effect on the date the service was provided.*

(b) *Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer whose agent neglects or fails to use the proper fee schedule may be assessed a penalty of not less than \$200 or more than \$1,000 for each bill that its agent reviews under a fee schedule other than the proper Montana fee schedule.*

(c) *An insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted liability claim within 60 days of receipt of the bill may be assessed a penalty of not less than \$200 or more than \$1,000 for each bill that is the subject of a delay as provided in this subsection (5)(c).*

(5)(6) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits are denied to a claimant, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(6)(7) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(8) *An insurer may contest a penalty assessed pursuant to subsection (4) or (5) in a hearing conducted according to department rules. A party may appeal the final agency order to the workers' compensation court. The court shall review the order pursuant to the requirements of 2-4-704.*

(7)(9) The department may adopt rules to implement this section.

(8)(10) (a) For the purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits.”

Section 2. Section 39-71-418, MCA, is amended to read:

“39-71-418. Suspension or revocation of independent contractor exemption certificate. (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of 39-71-417(4).

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

(a) ~~provided made~~ misrepresentations in the application affidavit or certificate renewal form;

(b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate; ~~or~~

(c) failed to cooperate with the department in providing information relevant to the continued validity of the holder’s certificate; *or*

(d) *does not have an independently established business as required by 39-71-417(4).*

(3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder’s waiver of the rights and benefits of the Workers’ Compensation Act for the period prior to notice to the hiring agent by the department of the department’s decision to suspend or revoke the independent contractor exemption certificate.

(4) A decision by the department’s independent contractor central unit to suspend or revoke an independent contractor exemption certificate may be contested in the same manner as provided in 39-71-415(2).”

Section 3. Section 39-71-2215, MCA, is amended to read:

“39-71-2215. Security deposit to ensure payment of liability of plan No. 2 insurer. (1) Except as provided in subsection (7), a plan No. 2 insurer issuing or renewing a policy on or after January 1, 2008, shall post a security deposit with the department as provided by this section. The purpose of the security deposit is to provide a ready source of funds to pay claims arising under this chapter if the plan No. 2 insurer:

(a) becomes insolvent;

(b) is placed in receivership;

(c) declares bankruptcy;

(d) seeks protection from its creditors; or

(e) is otherwise unwilling or unable to pay its liabilities arising under this chapter.

(2) The amount of the security deposit, which is subject to the discretion of the department, must be in an amount from \$25,000 to \$250,000. The security deposit must be posted in the form of:

(a) a certificate of deposit;

(b) a United States treasury note; or

(c) an irrevocable letter of credit.

(3) If a plan No. 2 insurer fails to discharge any determined liability within the time set by the department, the department may convert the security deposit to cash and use the proceeds to pay the liability. Upon the conversion, the plan No. 2 insurer shall immediately furnish additional security to the department in an amount determined by the department to provide reasonable assurance that all current and future liabilities incurred by the plan No. 2 insurer as a result of the coverage provided under this chapter can be fully paid.

(4) (a) The security deposit required by this section is the property of the department and is held in trust by the department for the payment of the liabilities of the plan No. 2 insurer incurred under this chapter.

(b) Any earnings made by the security deposit accrue to the ~~security deposit insurer~~ insurer.

(c) Upon proof of final payment of all liabilities incurred under this chapter, the unexpended portion of the security deposit must be discharged and any proceeds remaining are payable to the plan No. 2 insurer.

(5) In the event of the insolvency of a plan No. 2 insurer, the department may, in its discretion, release part or all of the security deposit to the Montana insurance guaranty association, provided for in 33-10-103, for payment of the plan No. 2 insurer's Montana workers' compensation claims if:

(a) the plan No. 2 insurer has been determined to be insolvent by a court of competent jurisdiction or is the debtor in a bankruptcy proceeding;

(b) the plan No. 2 insurer is unable to pay its workers' compensation claims; and

(c) the plan No. 2 insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association.

(6) The department is authorized to share information and coordinate its actions with the Montana insurance commissioner and other appropriate regulatory agencies with respect to actions taken pursuant to this section.

(7) A captive reciprocal insurer specified in 39-71-2201 is not subject to this section."

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved April 8, 2011

CHAPTER NO. 151

[HB 116]

AN ACT PROVIDING FOR ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING EMPLOYER LIABILITY REGARDING REPORTS RELATING TO RETIRED MEMBERS; CHANGING THE ACTUARIAL INTEREST RATE ON SERVICE PURCHASE AGREEMENTS; AMENDING PROVISIONS GOVERNING WORKING RETIREES; REVISING CAPS ON COMPENSATION THAT CAN BE USED IN THE CALCULATION OF AVERAGE FINAL COMPENSATION; PROVIDING FOR A FULL ACTUARIAL REDUCTION FOR EARLY RETIREMENT; AMENDING SECTIONS 19-20-208, 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, 19-20-416, 19-20-427, 19-20-715, 19-20-731, AND 19-20-802, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 19-20-208, MCA, is amended to read:

“19-20-208. Duties and liability of employer. (1) Each employer shall:

(1)(a) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2)(b) transmit to the executive director of the retirement board the employer’s contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3)(c) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board’s duties;

(4)(d) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5)(e) each month, report the name, social security number, and gross earnings of each retired member of the system who has been employed in a part-time teaching, administrative, or faculty position under the reemployment provisions of 19-20-731;

(6)(f) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(7)(g) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(8)(h) notify the retirement board of the employment of a person eligible for membership and forward the person’s membership application to the board; and

(9)(i) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member’s retirement.

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.”

Section 2. Section 19-20-402, MCA, is amended to read:

“19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) A member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member’s out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member’s contributions over into the retirement system or must receive a refund of the member’s contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after the salary was reported to the system for the fiscal year beginning July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) *if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or*

(b) *if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.*

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 3. Section 19-20-403, MCA, is amended to read:

"19-20-403. Creditable service for employment while on leave. (1) (a) A member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave.

(b) To be eligible to purchase service under this section, a member must have at least 5 years of membership service in the retirement system, must have been a member prior to the leave, and must have completed 1 year of active membership in Montana subsequent to the member's return.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contributions for the member's first full year's teaching salary earned in Montana after the member's return from leave, plus interest.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) *if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or*

(b) *if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.*

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.”

Section 4. Section 19-20-404, MCA, is amended to read:

“19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To receive credit for this service, a member shall submit to the board a written application and proper certification of the member's military service.

(2) (a) If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection (2)(a) for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service; if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest *paid as follows:*

(i) *if a written application to purchase service is signed prior to July 1, 2012, at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana; or*

(ii) *if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.*

(b) The contribution rate is that rate in effect at the time the person is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.”

Section 5. Section 19-20-408, MCA, is amended to read:

“19-20-408. Creditable service for employment in private schools.

(1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member’s private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member’s first full year’s teaching salary earned after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) *if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member’s account from the date the member was eligible to purchase the service; or*

(b) *if a written application to purchase service is signed after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.*

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.”

Section 6. Section 19-20-410, MCA, is amended to read:

“19-20-410. Creditable service for extension service employment.

(1) (a) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's teaching salary earned after becoming a member of the retirement system, plus interest *paid as follows*:

(i) *if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service; or*

(ii) *if a written application to purchase service is signed after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.*

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

Section 7. Section 19-20-416, MCA, is amended to read:

"19-20-416. Credit for legislative service required. (1) A legislator who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes:

~~(a)~~ an amount equal to the member contributions that would have been made if the legislator had elected membership; ~~and~~

~~(b)~~ *plus interest paid as follows:*

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned if they had been on deposit with the retirement system; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected membership plus interest at the rate that the contributions would have earned if they had been on deposit with the retirement system."

Section 8. Section 19-20-427, MCA, is amended to read:

"19-20-427. Redeposit of contributions previously withdrawn. (1) In addition to the normal contributions required under 19-20-602, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an

amount equal to the accumulated contributions that the member has previously withdrawn, plus interest ~~in the amount that~~ *paid as follows:*

(a) *if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn; or*

(b) *if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.*

(2) The redeposit must be made in accordance with 19-20-415.”

Section 9. Section 19-20-715, MCA, is amended to read:

“19-20-715. Compensation limit. (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) In determining a member’s retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year’s compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, ~~except as provided by rule by the retirement board~~ *increases that result from movement on the employer’s adopted salary matrix.*

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716(1)(b).”

Section 10. Section 19-20-731, MCA, is amended to read:

“19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits — reporting obligations of retired member. (1) (a) Except as [provided in 19-20-732 or as] otherwise provided in this section, a retired member may be employed ~~part-time~~ by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member’s average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member’s behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in [19-20-732 and] 19-20-733, the retirement benefit of a retired member:

~~(a)~~ employed ~~in a part-time position or~~ *and* earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

~~(b)~~ employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) For purposes of this section, "position ~~eligible to participate in that is reportable to~~ the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

(5) For the purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

~~(5)~~(6) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program. (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

Section 11. Section 19-20-802, MCA, is amended to read:

"19-20-802. Early retirement. (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if the member files with the retirement board the member's written application.

(2) The early retirement allowance must be determined as prescribed in 19-20-804 ~~and section 5, Chapter 549, Laws of 1981,~~ with the exception that the allowance will be reduced as follows:

~~(a)~~ by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service; and

(b) by ~~3/10~~ of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service using actuarially equivalent factors based on the most recent valuation of the system.”

Section 12. Effective date. [This act] is effective July 1, 2011.

Approved April 8, 2011

CHAPTER NO. 152

[HB 123]

AN ACT REVISING CERTAIN DEADLINES RELATIVE TO SCHOOL AND LOCAL GOVERNMENT FINANCING LAWS; AMENDING SECTIONS 7-6-4036, 15-10-305, 20-3-205, 20-3-209, 20-7-705, 20-9-115, 20-9-121, 20-9-131, 20-9-134, 20-9-141, 20-9-142, 20-9-151, 20-9-152, 20-9-213, 20-9-439, 20-9-501, 20-9-503, 20-9-506, 20-9-533, 20-9-534, 20-9-604, 20-10-144, 20-10-146, 20-10-147, AND 20-15-313, MCA; REPEALING SECTION 20-9-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-6-4036, MCA, is amended to read:

“7-6-4036. Fixing tax levy. (1) The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality:

(a) by the later of the ~~second first Monday Thursday~~ in ~~August~~ *September* or within ~~45~~ *30* calendar days after receiving certified taxable values;

(b) after the approval and adoption of the final budget; and

(c) at levels that will balance the budgets as provided in 7-6-4034.

(2) Each levy:

(a) must be made in the manner provided by 15-10-201; and

(b) except for a judgment levy under 2-9-316 or 7-6-4015, is subject to 15-10-420.”

Section 2. Section 15-10-305, MCA, is amended to read:

“15-10-305. Clerk and recorder to report mill levy — department to compute and enter taxes. (1) (a) The county clerk and recorder shall by the ~~third second~~ *second* Monday in ~~August~~ *September* or *within 30 calendar days after receiving certified taxable values* notify the department of the number of mills needed to be levied for each taxing jurisdiction in the county. Except as provided in subsection (1)(b), the department shall compute the taxes by multiplying the number of mills times the taxable value of the property to be taxed and shall add any fees or assessments required to be levied against a person owning property. All taxes, fees, and assessments must be itemized for the property listed in the property tax record.

(b) In conveyances that result in a land split, the taxes must be based on the property as assessed on January 1 preceding the conveyance. The department is not required to include the name of the new owner in the computation of the amount of taxes, fees, and assessments to be levied against property that is part of a land conveyance if including the new owner’s name would cause the department to violate the deadline provided in subsection (2).

(2) The department shall complete the computation of the amount of taxes, fees, and assessments to be levied against the property and shall notify the county clerk and recorder and the county treasurer by the second Monday in October. *Notwithstanding the provisions of 15-10-321, if a county clerk and recorder fails to timely notify the department of the number of mills needed to be levied for each taxing jurisdiction in that county in accordance with subsection (1)(a), the department must have additional time to meet the notification requirement of this subsection (2) equal to the number of days that the notification required in subsection (1)(a) was received late by the department.*

Section 3. Section 20-3-205, MCA, is amended to read:

“20-3-205. Powers and duties. (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(f) keep a transcript of the district boundaries of the county;

(g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(i) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(j) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(k) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title ~~regulating school budgeting systems;~~

~~(l) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;~~

~~(m)~~(l) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

~~(n)~~(m) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(1)(c);

~~(o)~~(n) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

~~(p)~~(o) compute the revenue and compute the district and county levy requirements for each fund included in each district’s final budget and report

the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(~~e~~)(p) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(~~e~~)(q) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(~~s~~)(r) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(~~t~~)(s) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(~~t~~)(t) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(~~v~~)(u) administer the oath of office to trustees without the receipt of pay for administering the oath;

(~~w~~)(v) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(~~x~~)(w) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(ii) the total receipts that were realized in each fund maintained by the district;

(iii) the total expenditures that were made from each fund maintained by the district; and

(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(~~y~~)(x) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.

(b) When two or more districts in more than one county consolidate, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202."

Section 4. Section 20-3-209, MCA, is amended to read:

"20-3-209. Annual report. The county superintendent of each county shall submit an annual report to the superintendent of public instruction ~~not later than the second Monday in~~ *on or before September 15*. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) the revenue amounts used to establish the levy requirements for the county school fund supporting school district transportation schedules, as prescribed by 20-10-146, and for the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501;

(3) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and

(4) any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title."

Section 5. Section 20-7-705, MCA, is amended to read:

"20-7-705. Adult education fund. (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax on the taxable value of all taxable property within the district for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners ~~on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* and a levy on the district must be made by the county commissioners in accordance with 20-9-142."

Section 6. Section 20-9-115, MCA, is amended to read:

"20-9-115. Notice of final budget meeting. Between July 1 and August 4 10 of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating the date, time, and place that the trustees will meet for the purpose of considering and adopting the final budget of the district, stating that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and stating that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

Section 7. Section 20-9-121, MCA, is amended to read:

“20-9-121. County treasurer’s statement of cash balances and bond information. (1) By July ~~10~~ 20, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district at the close of the last-completed school fiscal year. The county treasurer shall also include on each district’s statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information must be prescribed by the superintendent of public instruction.

(2) By July ~~10~~ 20, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement must be prescribed by the superintendent of public instruction.

(3) ~~On or before~~ By July ~~10~~ 20, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent, who shall forward the information to each district.”

Section 8. Section 20-9-131, MCA, is amended to read:

“20-9-131. Final budget meeting. (1) On or before August ~~15~~ 20, on the date and at the time and place stated in the notice published pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than ~~the fourth Monday in August 25~~ and before *the computation of the general fund net levy requirement by the county superintendent and the fixing of the tax levies for each district.* Any taxpayer in the district may attend any portion of the trustees’ meeting and be heard on the budget of the district or on any item or amount contained in the budget.

(3) Upon final approval, the trustees shall deliver the adopted budget, including the amounts to be raised by tax levies, to the county superintendent of schools within ~~5~~ 3 days.”

Section 9. Section 20-9-134, MCA, is amended to read:

“20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before ~~the second Monday in~~ September 15; and

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1.”

Section 10. 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; and

(v) school district block grants distributed under 20-9-630.

(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 any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners ~~on the fourth Monday of August~~ *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 11. Section 20-9-142, MCA, is amended to read:

“20-9-142. Fixing and levying taxes by board of county commissioners. ~~On the fourth Monday in August~~ *By the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values,* the county superintendent shall place before the board of county commissioners the final adopted budget of the district. It is the duty of the board of county commissioners, *as provided in 7-6-4036,* to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget.”

Section 12. Section 20-9-151, MCA, is amended to read:

“20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of the budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district, the final budgets of joint districts must be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenue and determine the number of mills that need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenue and determination of the tax levies.

(3) After determining, in accordance with law, the number of mills that need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies must be prepared and signed by the county superintendents involved in the computation. A copy of the statement must be delivered to the board of county commissioners of each county in which a part of the joint district is located ~~not later than the Friday immediately preceding the fourth Monday in August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values.*”

Section 13. Section 20-9-152, MCA, is amended to read:

“20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes ~~on the fourth Monday in August~~ *by the later of the first Thursday in September or within 30 calendar days after receiving certified taxable values,* the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in each board’s county at the number of mills for each levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent.”

Section 14. Section 20-9-213, MCA, is amended to read:

“20-9-213. Duties of trustees. The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund and account maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants or checks, as applicable, to be issued for the payment of lawful obligations;

(3) issue warrants or checks, as applicable, on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, either by directing the county treasurer to invest any money of the district or by directly investing the money of the district in eligible securities, as identified in 7-6-202, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (4), including those investments authorized by the board of investments under Title 17, chapter 6. A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district either shall contract for investment services with any company complying with the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted ~~not later than September 1~~ *on or before August 15* to

the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district.”

Section 15. Section 20-9-439, MCA, is amended to read:

“20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate. Subject to 20-6-326, the following provisions apply:

(1) The county superintendent shall compute the levy requirement for each school district’s general obligation debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are authorized by 20-9-437(2) to be used to repay the district’s bonds; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners ~~on the fourth Monday of August~~ *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 net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court

that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county.”

Section 16. Section 20-9-501, MCA, is amended to read:

“20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers’ retirement system or the public employees’ retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer’s contributions to the systems as provided in subsection (2)(a). The district’s or the cooperative’s contribution for each employee who is a member of the teachers’ retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district’s or the cooperative’s contribution for each employee who is a member of the public employees’ retirement system must be calculated in accordance with 19-3-316. The district’s or the cooperative’s contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district’s or the cooperative’s contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer’s contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative’s interlocal cooperative fund if the fund is supported solely from districts’ general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district’s school food services fund provided for in 20-10-204; *and*

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514; ~~and~~

~~(v) for the 2011 biennium only, a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are budgeted in the district general fund but are paid from state fiscal~~

~~stabilization funds received pursuant the American Recovery and Reinvestment Act of 2009, Public Law 111-5.~~

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) ~~report each levy requirement to the county commissioners on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint

district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction ~~not later than~~ *on or before the second Monday in September 15*. The report must be completed on forms supplied by the superintendent of public instruction.”

Section 17. Section 20-9-503, MCA, is amended to read:

“20-9-503. Budgeting, tax levy, and use of building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include the authorized amount in the building reserve fund of the final budget. The county superintendent shall report the amount as the building reserve fund levy requirement to the county commissioners ~~on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values*, and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund may:

(a) pledge the revenue for loans from the building reserve fund levy for up to 5 years. However, loan proceeds may be used only for projects authorized by 20-9-502.

(b) expend money from the fund for the purpose or purposes for which it was authorized without the specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to begin the authorized projects. The expenditures may not invalidate the district’s authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest the money in accordance with 20-9-213(4). The interest earned from the investment must be credited to

the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for the fund.”

Section 18. Section 20-9-506, MCA, is amended to read:

“20-9-506. Budgeting and net levy requirement for nonoperating fund. (1) The trustees of any district ~~which~~ *that* does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. ~~Such~~ *The* nonoperating budget ~~shall~~ *must* contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form ~~shall~~ *must* be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for ~~such~~ *the* fund by subtracting from the amount authorized by ~~such~~ *the* budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other ~~moneys~~ *money* that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners ~~on the fourth Monday of August~~ *on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and such levies shall be made on the district by the county commissioners shall impose the required levies on the district* in accordance with 20-9-142.”

Section 19. Section 20-9-533, MCA, is amended to read:

“20-9-533. Technology acquisition and depreciation fund — limitations. (1) The trustees of a district may establish a technology acquisition and depreciation fund for school district expenditures incurred and depreciation accrued for:

(a) the purchase, rental, repair, maintenance, and depreciation of technological equipment, including computers and computer network access; and

(b) associated technical training for school district personnel.

(2) Any expenditures from the technology acquisition and depreciation fund must be made in accordance with the financial administration requirements for a budgeted fund pursuant to this title. The trustees of a district shall fund the technology acquisition and depreciation fund with:

(a) the state money received under 20-9-534; and

(b) other local, state, private, and federal funds received for the purpose of funding technology or technology-associated training.

(3) In depreciating the technological equipment of a school district, the trustees may include in the district’s budget, contingent upon voter approval of a levy under subsection (6) and pursuant to the school budgeting requirements of this title, an amount each fiscal year that does not exceed 20% of the original cost of any technological equipment, including computers and computer network access, that is owned by the district. The amount budgeted may not, over time, exceed 150% of the original cost of the equipment.

(4) The annual revenue requirement for each district's technology acquisition and depreciation fund determined within the limitations of this section must be reported by the county superintendent of schools to the board of county commissioners on ~~the fourth Monday of August~~ *or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* as the technology acquisition and depreciation fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(5) Any expenditure of technology acquisition and depreciation fund money must be within the limitations of the district's final technology acquisition and depreciation fund budget and the school financial administration provisions of this title.

(6) In addition to the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund the depreciation of technological equipment authorized under this section. The election must be called and conducted in the manner prescribed by this title for school elections and in the manner prescribed by 15-10-425.

(7) The technology proposition is approved if a majority of those electors voting at the election approve the levy. Notwithstanding any other provision of law, the levy under subsection (6) is subject to 15-10-420.

(8) The trustees of a district may not use revenue in the technology acquisition and depreciation fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance."

Section 20. Section 20-9-534, MCA, is amended to read:

"20-9-534. Statutory appropriation for school technology purposes.

(1) The amount of \$1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in 20-9-516 for grants for school technology purposes.

(2) ~~By September 1~~ *the third Friday in July*, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533 in the prior fiscal year."

Section 21. Section 20-9-604, MCA, is amended to read:

"20-9-604. Gifts, legacies, devises, and administration of endowment fund.

(1) The trustees of a district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, deviser, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit the gift, legacy, devise, or the proceeds in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund may be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund must be invested by the trustees according to the provisions of the Uniform Management of Institutional Funds Act, Title 72, chapter 30.

(3) All interest collected on the deposits or investments must be credited to the endowment fund. No portion of the endowment fund may be loaned to the district, nor may any money of the fund be invested in warrants of the district.

(4) Whenever a district has been abandoned, the endowment fund of the abandoned district must be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on the treasurer's official bond for the endowment fund of any district of the county. ~~No later than~~ *By July 1 20 each school fiscal year*, the county treasurer shall report to the trustees of each district on the condition of its endowment fund, including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in the treasurer's reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district that become a part of the endowment fund."

Section 22. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) school district block grants distributed under 20-9-630;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners ~~on the fourth Monday of August~~ *on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142.”

Section 23. Section 20-10-146, MCA, is amended to read:

“20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under 20-9-632;

(vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vii) federal forest reserve funds allocated under the provisions of 17-3-213; and

(viii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners ~~on the fourth Monday of August~~ *on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction ~~not later than the second Monday in~~ *on or before September 15*. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.”

Section 24. Section 20-10-147, MCA, is amended to read:

“20-10-147. Bus depreciation reserve fund. (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

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

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

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district’s buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and

the trustees shall immediately order the county treasurer to make the approved transfer.”

Section 25. Section 20-15-313, MCA, is amended to read:

“20-15-313. Tax levy. ~~On the second Monday in August~~ *By the later of the first Thursday in September or within 30 calendar days after receiving certified taxable values,* the board of county commissioners of any county where a community college district is located shall, subject to 15-10-420, fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by 20-15-312(1)(b) and the voted levy prescribed by 20-15-311(5) if one has been approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.”

Section 26. Repealer. The following section of the Montana Code Annotated is repealed:

20-9-211. Annual financial report of county superintendent.

Section 27. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2011

CHAPTER NO. 153

[HB 131]

AN ACT ELIMINATING THE REQUIREMENT FOR THE STATE TO RECOVER FROM A CITY OR COUNTY A PERCENTAGE OF CERTAIN COSTS RELATED TO INCIDENTS INVOLVING HAZARDOUS MATERIAL OR ORPHANED HAZARDOUS MATERIAL; AND AMENDING SECTIONS 10-3-1203 AND 10-3-1216, MCA.

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

Section 1. Section 10-3-1203, MCA, is amended to read:

“10-3-1203. Definitions. As used in this part, the following definitions apply:

- (1) “Commission” means the state emergency response commission.
- (2) “Division” means the division of disaster and emergency services in the department of military affairs.
- (3) “Duration of response” means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder’s place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.
- (4) “Hazardous material” means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.
- (5) “Hazardous material incident response team” means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to

control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Incident commander" means the person who is designated in the local emergency operations plan.

(9) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(10) "Local emergency response authority" means the agency designated by the city, county, or commission to be responsible for the management of an incident at the local level.

~~(11) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.~~

~~(12)~~(11) "Plan" means the Montana incident management and hazardous material response support plan.

~~(13)~~(12) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

~~(14)~~(13) "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include members of the commission and local and state government responders.

~~(15)~~(14) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment."

Section 2. Section 10-3-1216, MCA, is amended to read:

"10-3-1216. Cost recovery and civil remedies. (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission, the state hazardous material incident response team, and the local emergency response authority, this part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

~~(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to this part.~~

~~(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions."~~

Approved April 8, 2011

CHAPTER NO. 154

[HB 134]

AN ACT IMPROVING THE ACTUARIAL UNFUNDED LIABILITY OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM BY INCREASING THE TIME PERIOD USED IN CALCULATING HIGHEST AVERAGE COMPENSATION FOR NEW HIRES; AMENDING SECTION 19-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 19-8-101, MCA, is amended to read:

"19-8-101. 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 in payment 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 maintenance, allowances, and expenses.

(2) (a) "Highest average compensation" means ~~a member's~~:

(i) *for members hired prior to [the effective date of this act], the highest average monthly compensation during any 36 consecutive months of membership service;*

(ii) for members hired on or after [the effective date of this act], the highest average monthly compensation during any 60 consecutive months of membership service; or;

(iii) in the event a member has not served ~~at least 36 months~~, the minimum specified period of membership service, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for severance pay, including payment 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.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation designated or appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 8, 2011

CHAPTER NO. 155

[HB 135]

AN ACT INCREASING THE TIME PERIOD FOR CALCULATING HIGHEST AVERAGE COMPENSATION FOR INDIVIDUALS WHO INITIALLY BECOME MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM AFTER JUNE 30, 2011; AMENDING SECTION 19-7-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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 maintenance, allowances, and expenses.

(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: a

(i) for members hired prior to [the effective date of this act], the member’s highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for members hired on or after [the effective date of this act], the highest average compensation during any 60 consecutive months of membership service; or;

(iii) if a member has not served at least 36 months 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 severance pay, including payment 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.

(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 deputy sheriff with the requisite professional certification and licensing.”

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 8, 2011

CHAPTER NO. 156

[HB 185]

AN ACT LISTING SYNTHETIC MARIJUANA AND SALVIA AS DANGEROUS DRUGS; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING PENALTIES; AMENDING SECTIONS 44-12-102, 45-9-101, 45-9-102, 45-9-110, 50-31-306, 50-31-310, AND 50-32-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 44-12-102, MCA, is amended to read:

“44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9, all proceeds traceable to an exchange, and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with the owner's actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) A conveyance or container is not subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana, *but this exception does not apply to synthetic cannabinoids listed as dangerous drugs in 50-32-222.*

Section 2. Section 45-9-101, MCA, is amended to read:

“45-9-101. Criminal distribution of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchange, 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 a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) (a) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(b) Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) *The exception for marijuana or tetrahydrocannabinol in subsection (3)(a) does not apply to synthetic cannabinoids listed as dangerous drugs in 50-32-222.*

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

(5) 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) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

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

Section 3. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not

to exceed 1 year or in the state prison for a term not to exceed 3 years or by both. *This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous drugs in 50-32-222.*

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed \$50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.

(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

(i) the person to abide by the standard conditions of probation established by the department of corrections;

(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;

(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(iv) that the person may not consume alcoholic beverages;

(v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and

(vi) the person to submit to random or routine drug and alcohol testing.

(6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

(7) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(8) Ultimate users and 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 4. Section 45-9-110, MCA, is amended to read:

“45-9-110. Criminal production or manufacture of dangerous drugs.

(1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222. *The penalties provided for in this subsection also apply to the criminal production or manufacture of synthetic cannabinoids listed as dangerous drugs in 50-32-222.*

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than \$50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000. “Weight” means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

(5) 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 5. Section 50-31-306, MCA, is amended to read:

“50-31-306. When drug or device misbranded. (1) A drug or device is considered to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation may be permitted and exemptions as to small packages may be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, *Salvia divinorum*, sulfonmethane, *synthetic cannabinoids*, or any chemical derivative of the substance that, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act (21 U.S.C. 352(d)), unless its label bears the name and quantity or proportion of the substance or derivative in juxtaposition to the statement "Warning—May be habit-forming";

(e) if it is a drug, unless its label bears the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301) of the drug, if there is one; and

(ii) in case the drug is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained in the drug. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), applies only to prescription drugs, and to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions may be allowed under regulations promulgated by the department or under the federal act.

(f) unless its labeling bears:

(i) adequate directions for use; however, if any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting the drug or device from the requirements, and articles exempted under regulations issued under section 502(f) of the federal act (21 U.S.C. 352(f)) may also be exempt; and

(ii) adequate warnings against use in those pathological conditions or by children when its use may be dangerous to health or adequate warnings against unsafe dosage or methods or duration of administration or application, in a manner and form that are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed in the

compendium. The method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection (1)(g) and those of subsection (1)(e) as to the name by which the drug or its ingredients must be designated, the requirements of subsection (1)(e) prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in a form and manner and its label bears a statement of precautions that the regulations issued by the department or under the federal act require as necessary for the protection of public health. A regulation may not be established for any drug recognized in an official compendium until the department has informed the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and the body has failed within a reasonable time to prescribe the requirements.

(i) if it is a drug and its container is made, formed, or filled in a way that is misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act (21 U.S.C. 356); and

(ii) the certificate or release is in effect with respect to the drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act (21 U.S.C. 357); and

(ii) the certificate or release is in effect with respect to the drug. This subsection (1)(n) does not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act (21 U.S.C. 357(c) or (d)).

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor of the drug includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301;

(ii) the formula showing quantitatively each ingredient of the drug to the extent required for labels under section 502(e) of the federal act (21 U.S.C. 352(e)); and

(iii) other information in brief summary relating to side effects, contraindications, and effectiveness that is required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed on the drug or upon its container with intent to defraud.

(2) A drug that is subject to 50-31-307 is considered to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply is considered to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence."

Section 6. Section 50-31-310, MCA, is amended to read:

"50-31-310. Narcotic and marijuana laws not affected. Nothing in 50-31-306(2), 50-31-307, 50-31-308, or 50-31-309 shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs ~~or~~, marijuana, *or synthetic cannabinoids*, as defined in the applicable federal and state laws relating to narcotic drugs ~~and~~, marijuana, *and synthetic cannabinoids.*"

Section 7. Section 50-32-222, MCA, is amended to read:

"50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

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

- (a) acetyl-alpha-methylfentanyl;
- (b) acetylmethadol;
- (c) allylprodine;
- (d) alphacetylmethadol, except levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
- (e) alphameprodine;
- (f) alphamethadol;
- (g) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide and;
- (i) benzethidine;
- (j) betacetylmethadol;
- (k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;
- (l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
- (m) betameprodine;
- (n) betamethadol;

- (o) betaprodine;
- (p) clonitazene;
- (q) dextromoramide;
- (r) diampromide;
- (s) diethylthiambutene;
- (t) difenoxin;
- (u) dimenoxadol;
- (v) dimepheptanol;
- (w) dimethylthiambutene;
- (x) dioxaphetyl butyrate;
- (y) dipipanone;
- (z) ethylmethylthiambutene;
- (aa) etonitazene;
- (bb) etoxeridine;
- (cc) furethidine;
- (dd) hydroxypethidine;
- (ee) ketobemidone;
- (ff) levomoramide;
- (gg) levophenacylmorphan;
- (hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;
- (ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide;
- (jj) morpheridine;
- (kk) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (ll) noracymethadol;
- (mm) norlevorphanol;
- (nn) normethadone;
- (oo) norpipanone;
- (pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny]propanamide;
- (qq) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (rr) phenadoxone;
- (ss) phenampromide;
- (tt) phenomorphan;
- (uu) phenoperidine;
- (vv) piritramide;
- (ww) proheptazine;
- (xx) properidine;
- (yy) propiram;
- (zz) racemoramide;
- (aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]-propanamide;
- (bbb) tilidine; and
- (ccc) trimeperidine.

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

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

- (a) acetorphine;
- (b) acetyldihydrocodeine;
- (c) benzylmorphine;
- (d) codeine methylbromide;
- (e) codeine-n-oxide;
- (f) cyprenorphine;
- (g) desomorphine;
- (h) dihydromorphine;
- (i) drotebanol;
- (j) etorphine, except hydrochloride salt;
- (k) heroin;
- (l) hydromorphanol;
- (m) methyldesorphine;
- (n) methyldihydromorphine;
- (o) morphine methylbromide;
- (p) morphine methylsulfonate;
- (q) morphine-n-oxide;
- (r) myrophine;
- (s) nicocodeine;
- (t) nicomorphine;
- (u) normorphine;
- (v) pholcodine; and
- (w) thebacon.

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

(a) alpha-ethyltryptamine. Trade or other names include etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.

(b) 4-bromo-2,5-dimethoxy-amphetamine. Trade or other names include 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine and 4-bromo-2,5-DMA.

(c) 4-bromo-2,5-dimethoxyphenethylamine. Trade or other names include 2-(4-bromo-2, 5-dimethoxyphenyl)-1-aminoethane, alpha-desmethyldOB, and 2C-B,Nexus.

(d) 2,5-dimethoxyamphetamine. Trade or other names include 2,5-dimethoxy-alpha-methylphenethylamine and 2,5-DMA.

(e) 3,4-methylenedioxy amphetamine;

(f) 2,5-dimethoxy-4-ethylamphetamine. A trade or other name is DOET.

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

(cc) ethylamine analog of phencyclidine. Trade or others names include N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE.

(dd) pyrrolidine analog of phencyclidine. Trade or other names include 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP.

(ee) thiophene analog of phencyclidine. Trade or other names include 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TCP, and TCP.

(ff) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. A trade or other name is TCPy.

(gg) *synthetic cannabinoids:*

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

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

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

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

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

(vi) *1-pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);*

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

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

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

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

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

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

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

(xi) *any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;*

(xii) *any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;*

(xiii) *any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;*

(xiv) any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent; or

(xv) any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent;

(hh) *Salvia divinorum*: Salvinorin A (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodehydro-6a,10b-dimethyl-4, 10-dioxo-2H-naphtho [2,1-c] pyran-7-carboxylic acid methyl ester.

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

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

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

- (a) mecloqualone; and
- (b) methaqualone.

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

(a) aminorex. Trade or other names include aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine.

(b) cathinone. Trade or other names include 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

(c) fenethylamine;

(d) methcathinone. Trade or other names include 2-(methylamino)-propionophenone, alpha-(methylamino)propionophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropionophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers.

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

(f) N-ethylamphetamine;

(g) N,N-dimethylamphetamine, also known as N,N-alpha-trimethylbenzeneethamine and N,N-alpha-trimethylphenethylamine.

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

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

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

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

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

Approved April 8, 2011

CHAPTER NO. 157

[HB 225]

AN ACT PROVIDING A QUALIFIED EXEMPTION FROM THE ENVIRONMENTAL REVIEW COMPLIANCE LAWS FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS WHEN THE DEPARTMENT ACTS AS A SNOWMOBILE AREA OPERATOR OR WHEN THE DEPARTMENT PROVIDES FUNDING ASSISTANCE TO A SNOWMOBILE AREA OPERATOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Environmental review compliance — exemption. (1)

Except as provided in subsection (2), the department of fish, wildlife, and parks shall comply with the provisions of Title 75, chapter 1, parts 1 and 2, when:

(a) acting as a snowmobile area operator pursuant to 23-2-652 through 23-2-655; or

(b) awarding a grant or other funding assistance to a snowmobile area operator.

(2) The department of fish, wildlife, and parks is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions as a snowmobile area operator pursuant to 23-2-652 through 23-2-655 or when awarding a grant or other funding assistance to a snowmobile area operator if the action or award has been previously subject to environmental review under Title 75, chapter 1, parts 1 and 2, and there is no proposed change to the action or the use of the award.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 6, and the provisions of Title 23, chapter 2, part 6, apply to [section 1].

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

Approved April 8, 2011

CHAPTER NO. 158

[HB 256]

AN ACT PROVIDING FOR RECOGNITION IN MONTANA LAW OF THE RIGHT OF A MEMBER OF THE ARMED FORCES TO CONTROL THE DISPOSITION OF THE MEMBER'S REMAINS BY EXECUTION OF A DEPARTMENT OF DEFENSE FORM 93; AMENDING SECTION 37-19-904, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 37-19-904, MCA, is amended to read:

"37-19-904. Priority of rights of disposition. (1) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person's remains may execute an affidavit or a written instrument before a notary public in substantially the following form:

"State of Montana] ss

County of]

I, [person designating another person to control the disposition of the person's remains] do hereby designate [person who is provided with the right to control the disposition] with the right to control the disposition of my remains upon my death. I have or have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions. Subscribed and sworn to before me this day of the month of of the year

....."

(2) Except as provided in 37-19-903, 37-19-907, ~~and~~ *and* subsection (1) of this section, the right to control the disposition of the remains of a deceased person, including the location, manner, and conditions of the disposition and arrangements for funeral goods and services, vests in the following persons in the order named if the named person is 18 years of age or older and is of sound mind:

(a) *for a decedent who was on active duty in the armed forces of the United States, a member of the Montana national guard, or a member of the federal reserves of the armed forces of the United States at the time of the decedent's death, any person named by the decedent as the person with the right to control the decedent's disposition in a department of defense form 93;*

~~(a)~~(b) a person designated by the decedent as the person with the right to control the decedent's disposition in an affidavit or written instrument executed in accordance with subsection (1);

~~(b)~~(c) the surviving spouse;

~~(c)~~(d) the sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one-half of the surviving children may be vested with the rights and duties provided in this section if those surviving children have used reasonable efforts to notify all other surviving children of their instructions and they are not aware of opposition to their instructions on the part of more than one-half of all surviving children.

~~(d)~~(e) the surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent may be vested with the rights and

duties provided in this section if that parent's reasonable efforts have been unsuccessful in locating the absent surviving parent.

~~(e)~~(f) the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than one-half of the surviving siblings may be vested with the rights and duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half of all surviving siblings.

~~(f)~~(g) the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than one-half of the surviving grandparents may be vested with the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part of more than one-half of all surviving grandparents.

~~(g)~~(h) the guardian of the decedent at the time of the decedent's death, if a guardian had been appointed;

~~(h)~~(i) the personal representative of the estate of the decedent;

~~(i)~~(j) the person in classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

~~(j)~~(k) if the disposition of the remains of the decedent is the responsibility of the state or a local government, the public officer, administrator, or employee responsible for arranging the disposition of the decedent's remains; and

~~(k)~~(l) in the absence of any person provided for in subsections (2)(a) through ~~(2)(j)~~ (2)(k), any other person, including the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact the individuals provided for in subsections (2)(a) through ~~(2)(j)~~ (2)(k)."

Section 2. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to individuals who executed a department of defense form 93 before October 1, 2011.

Approved April 8, 2011

CHAPTER NO. 159

[HB 269]

AN ACT ESTABLISHING THE BLUE ALERT PROGRAM WITHIN THE DEPARTMENT OF JUSTICE TO ASSIST IN NOTIFICATION TO PERSONS CONCERNING AND CAPTURE OF PERSONS RESPONSIBLE FOR THE DEATH OR SERIOUS INJURY OF A PEACE OFFICER.

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

Section 1. Blue alert program. (1) There is a state alert system known as the blue alert program within the department of justice.

(2) Upon request by a law enforcement agency, the department may activate the blue alert program if the department determines that:

(a) a peace officer has been killed or seriously injured in the line of duty;

- (b) an individual suspected to have caused the death or injury is at large;
 - (c) a law enforcement agency has determined that the individual referred to in subsection (2)(b) poses a serious threat to the public, other peace officers, or both; and
 - (d) sufficient information exists about the individual referred to in subsection (2)(b) or about the death or injury so that the activation of the program would materially assist in the capture of the individual.
- (3) Upon activation of the blue alert program, the department shall notify the following entities in the state or area in which the alert is established:
- (a) all law enforcement agencies;
 - (b) individuals who, because of their proximity to the geographic area in which the death or injury occurred, may have observed the death or injury or the escape of the individual referred to in subsection (2)(b) or may themselves become a victim of that individual;
 - (c) individuals who may have a special relationship to the individual referred to in subsection (2)(b), such as a relative of that individual or a peace officer or other person within the criminal justice system who knows the individual; and
 - (d) other persons who the department determines would benefit from the notice.
- (4) The department shall terminate the blue alert when it determines that the individual referred to in subsection (2)(b) has been apprehended or when it determines that the blue alert will no longer materially assist in the capture of the individual.
- (5) The department shall adopt rules to implement this section.
- (6) As used in this section, the following definitions apply:
- (a) "Law enforcement agency" has the meaning provided in 44-11-303.
 - (b) "Peace officer" has the meaning provided in 46-1-202.

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

Approved April 8, 2011

CHAPTER NO. 160

[HB 315]

AN ACT ESTABLISHING A SAFE WORKING PRESSURE FACTOR FOR HISTORICAL BOILERS; REVISING REQUIREMENTS FOR TRACTION ENGINEER LICENSES; AND AMENDING SECTIONS 50-74-218 AND 50-74-307, MCA.

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

Section 1. Section 50-74-218, MCA, is amended to read:

"50-74-218. Safe working pressure. (1) If a boiler is constructed with lap horizontal seams on the boiler, dome, or drum, a factor of 4 1/2 ~~shall~~ *must* be used in determining the safe working pressure allowed on the boiler.

(2) If a boiler is constructed with butt strap horizontal seams, a factor of four may be used in determining the safe working pressure.

(3) *If a boiler is a historical boiler, as defined by the department by rule, on stayed sections, a safety factor of four must be used in determining the safe working pressure.*

~~(3)~~(4) If a boiler rests on a side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used in determining the safe working pressure.

~~(4)~~(5) If the horizontal lap seams of a boiler are exposed to the fire, a factor of five must be used in determining the safe working pressure.

~~(5)~~(6) On new stay bolts, 7,500 pounds pressure per square inch is allowed. If the stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on ~~them~~ *the stay bolts*.

~~(6)~~(7) On braces made of solid material, 8,000 pounds pressure per square inch is allowed. On welded braces or braces with only one crowfoot, 6,000 pounds pressure per square inch is allowed.

~~(7)~~(8) ~~No east Cast iron may not be used in the construction or reinforcements of a boiler if the pressure allowed on the boiler is more than 100 pounds per square inch.~~

Section 2. Section 50-74-307, MCA, is amended to read:

“50-74-307. Requirements for traction licenses. An applicant for a traction engineer’s license:

(1) must be 18 years of age or older;

(2) *shall attend a steam school approved by the department by rule and may apply steam school hours to the hour requirement established in subsection (3);*

(3) must have at least ~~480~~ *50* hours total experience in the operation of steam traction engines; *and*

~~(3)~~(4) shall successfully pass a written examination prescribed by the department; ~~and.~~

~~(4) must be found competent to operate a traction engine by the department.”~~

Approved April 8, 2011

CHAPTER NO. 161

[HB 391]

AN ACT PROVIDING THAT THE POWER OF INITIATIVE DOES NOT EXTEND TO THE PRIORITIZATION OF THE ENFORCEMENT OF ANY STATE LAW BY A UNIT OF LOCAL GOVERNMENT; AND AMENDING SECTION 7-5-131, MCA.

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

Section 1. Section 7-5-131, MCA, is amended to read:

“7-5-131. Right of initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.

(2) The powers of initiative ~~shall~~ *do* not extend to the following:

(a) the annual budget;

- (b) bond proceedings, except for ordinances authorizing bonds;
- (c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; ~~or~~
- (d) the levy of special assessments pledged for the payment of principal and interest on bonds; *or*
- (e) *the prioritization of the enforcement of any state law by a unit of local government.*

Approved April 10, 2011

CHAPTER NO. 162

[HB 430]

AN ACT REVISING LAWS REGARDING THE ADMINISTRATION OF CONSERVATION DISTRICTS; REVISING PROVISIONS RELATED TO THE REORGANIZATION OF DISTRICT GOVERNING BODIES; CLARIFYING THE COMPOSITION OF DISTRICT GOVERNING BODIES WHEN A PORTION OF AN INCORPORATED MUNICIPALITY IS LOCATED WITHIN THE BOUNDARY OF A CONSERVATION DISTRICT; AMENDING SECTIONS 76-15-301, 76-15-311, AND 76-15-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-15-301, MCA, is amended to read:

“76-15-301. Establishment of supervisor areas and reorganization of supervisor areas district governing bodies. (1) (a) ~~The A~~ conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. ~~If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county.~~ If less than five supervisor areas are established, a sufficient number of supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) (a) In a district containing no incorporated municipalities *that are completely within the boundaries of the district*, the department ~~may shall, upon passage of a resolution by the district to transition to seven supervisors,~~ reorganize the district ~~into seven supervisor areas as provided in 76-15-305 and this subsection (2).~~

(b) *A district that is reorganized pursuant to this section may be divided into no more than seven supervisor areas.*

(3) *If provided by ordinance of the district, a supervisor must reside in the area the supervisor represents.”*

Section 2. Section 76-15-311, MCA, is amended to read:

“76-15-311. Governing body of district. (1) If there are no incorporated municipalities *that are completely* within the boundaries of the district, the governing body of the district shall consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.

(2) If there are incorporated municipalities *that are completely* within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in ~~such~~ *those* districts. ~~The two appointed supervisors must be residents of municipalities within the district.~~ The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors ~~shall be~~ *is* 3 years.

(b) Where there are ~~more than two or more~~ incorporated municipalities *that are completely* within *the boundaries of* a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district. ~~and no~~ *A municipality shall may not* have more than one appointed supervisor residing ~~therein in the municipality.~~ *The legislative bodies of the incorporated municipalities within the district shall agree on the persons appointed to serve as the appointed supervisors.*

(3) *If there are no incorporated municipalities that are completely within the boundaries of the district but a portion of one or more incorporated municipalities is within the boundaries of a district, the elected supervisors may pass a resolution to transition to a board of seven members consisting of five elected supervisors and two supervisors appointed by the legislative bodies of the partially included municipalities as provided in subsection (2).*

(4) *A supervisor appointed under subsection (2) or (3) may live outside the municipality the supervisor represents, but the supervisor must reside within the boundaries of the district.*

(5) *An elected supervisor must reside within the boundaries of the district.*

~~(3)(6)~~ The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter."

Section 3. Section 76-15-312, MCA, is amended to read:

"76-15-312. Term of office and vacancies. (1) The term of office of each supervisor is 4 years, except that the supervisors who are first appointed by the department must be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor holds office until a successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

- (a) death;
- (b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
- (c) resignation;
- (d) removal from office;
- (e) unexcused absence from three consecutive regular meetings of the board of supervisors;
- (f) ceasing to ~~be a resident of~~ *reside in* the district;
- (g) conviction of a felony or a violation of official duties; or
- (h) the decision of a court declaring void the incumbent's election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) A vacancy occurring in the office of an elected supervisor must be filled by appointment by the remaining supervisors until the next regular election, when a successor must be elected to serve the unexpired term.”

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

Approved April 8, 2011

CHAPTER NO. 163

[HB 487]

AN ACT PROVIDING FOR LIFE INSURANCE COVERAGE FOR NONSPECIFIED DISCRETIONARY GROUPS THAT MEET CERTAIN REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Discretionary groups. (1) Subject to the requirements of this section, the lives of a group of individuals may be insured under a policy issued to a group other than one described in this part if the commissioner finds that:

- (a) the issuance of the policy is not contrary to the best interest of the public;
- (b) the issuance of the policy would result in economies of acquisition or administration; and
- (c) the benefits of the policy are reasonable in relation to the premiums charged.

(2) Group life insurance coverage under this section may be offered in this state by an insurer under a policy issued in another state only if this state or another state that has requirements substantially similar to the requirements in subsection (1) has made a determination that the requirements of subsection (1) have been met.

(3) The premium for a policy issued under this section must be paid either from the policyholder’s funds, from funds contributed by the covered persons, or from both.

(4) An insurer may exclude or limit the coverage on any individual if the evidence of the individual’s insurability is not satisfactory to the insurer.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 20, part 11, and the provisions of Title 33, chapter 20, part 11, apply to [section 1].

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

Approved April 8, 2011

CHAPTER NO. 164

[HB 498]

AN ACT AUTHORIZING AN IRRIGATION DISTRICT TO ISSUE BONDS OR ENTER INTO A CONTRACT WITH THE UNITED STATES IF APPROVED BY A MAJORITY VOTE OF THE VOTERS THAT ARE ELIGIBLE TO VOTE WITHIN THE IRRIGATION DISTRICT; AMENDING SECTIONS 85-7-2013, 85-7-2014, 85-7-2016, AND 85-7-2032, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-7-2013, MCA, is amended to read:

“85-7-2013. Petition Majority vote and petition requirements. (1) Bonds provided for in 85-7-2012 through 85-7-2015 may not be authorized or issued by or on behalf of any irrigation district organized under this chapter or by an irrigation district on behalf of a subdistrict located in the district and a contract may not be made with the United States as provided in 85-7-1906 except upon a petition signed by:

(a) approval by a majority vote of those voting on the question at an election conducted as prescribed in 85-7-1710;

(b) receipt of a petition signed by at least 60%, in number and acreage, of the holders of title or evidence of title to lands included within the district or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 60% in number and acreage of the holders of title or evidence of title to lands within the subdistrict; or

(c) receipt of a petition signed by at least 75%, in number and acreage, of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the district are situated or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 75% in number and acreage of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the subdistrict are situated.

(2) The petition must be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes of the bonds, have attached to it an affidavit verifying the signatures to the petition, and be filed with the secretary of the board. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of the district, the bonds may be authorized and issued in the manner provided for by 85-7-2019.

(3) *In an election held for approval to allow a district or subdistrict to issue bonds or enter into a contract under this section, the voting majority must own at least 50% of the acreage included in the district or subdistrict.”*

Section 2. Section 85-7-2014, MCA, is amended to read:

“85-7-2014. Procedure after election or petition filed. Upon an election or the filing of the petition pursuant to 85-7-2013, the board of commissioners shall, by appropriate order or resolution,:

(1) authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the election or petition;

(2) fix the numbers, denominations, and maturity or maturities of the bonds;

(3) specify the rate of interest on the bonds and whether it is payable annually or semiannually;

(4) designate the place and method of payment of the bonds and the interest on the bonds, within or outside the state of Montana;

(5) prescribe the form of the bonds; and

(6) provide for the levy of a special tax or assessment as provided in this chapter on all the lands in the district or for a levy on a subdistrict if the bonds are issued on behalf of the subdistrict, for the irrigation and benefit of which the district or subdistrict was organized and the bonds are issued or the contract is to be made, sufficient in an amount to pay the interest on and principal of the bonds when due and all amounts to be paid to the United States under any contract between the district and the United States for which bonds of the

district have not been deposited with the United States as provided in 85-7-1906.”

Section 3. Section 85-7-2016, MCA, is amended to read:

“85-7-2016. Confirmation by district court. (1) Within 10 days after the adoption of the order or resolution mentioned in 85-7-2014, the board of commissioners shall file a petition in the district court of the judicial district where the office of the board is located to determine the validity of the proceedings relative to the issuance of the bonds and the levy of the special tax or assessment.

(2) ~~Such~~ *The action shall must* be in the nature of a proceeding in rem, and jurisdiction of all parties interested ~~shall must~~ be had by giving notice. The petition ~~shall must~~ set forth:

(a) generally, the establishment and organization of the district;

(b) a certified copy of the *election results or petition mentioned provided for* in 85-7-2013;

(c) a certified copy of the order or resolution ~~mentioned provided for~~ in 85-7-2014;

(d) a ~~prayer request~~ for the confirmation of the proceedings of the board stated in the petition and for the confirmation of the bond issue and the special tax or assessment levied to pay the bonds and interest thereon.”

Section 4. Section 85-7-2032, MCA, is amended to read:

“85-7-2032. Amending or supplementing United States contracts — petition or election not necessary. ~~In case any~~ *If a* supplementary or amendatory contract ~~shall be~~ *is* made with the United States ~~hereunder under this part, no an election or petition as required by under~~ 85-7-2012 through 85-7-2015 ~~shall be necessary, nor shall~~ *is not necessary and* the board of commissioners of ~~such the~~ irrigation district ~~be is not~~ required to proceed under 85-7-2016 through 85-7-2018 for a judicial confirmation of the making of ~~such the~~ contract and the terms ~~thereof of the contract~~. It ~~shall be~~ *is* sufficient in the case of a contract made with the United States ~~hereunder under this part~~ for the board of commissioners of any irrigation district to authorize the execution of the ~~same contract~~ by its president and secretary by appropriate resolution adopted at any regular or special meeting of ~~said the~~ board of commissioners.”

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

Approved April 8, 2011

CHAPTER NO. 165

[HB 528]

AN ACT REVISING LAWS RELATING TO THE MONTANA COWBOY HALL OF FAME; REVISING LAWS RELATING TO ITS LOCATION; PROVIDING FOR ROAD SIGNS TO RECOGNIZE THE SITE; AND AMENDING SECTION 1-1-525, MCA.

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

Section 1. Section 1-1-525, MCA, is amended to read:

“1-1-525. Montana cowboy hall of fame — Wolf Point. (1) ~~The city of Wolf Point is designated as the site of the~~ *There is a* Montana cowboy hall of fame. *Once the recipient of the grant for site development and project planning authorized pursuant to section 4(7), Chapter 3, Special Laws of May 2007,*

determines the location of the Montana cowboy hall of fame, the grant recipient shall notify the department of commerce and the department of transportation.

(2) ~~The~~ *Once notified that the location of the Montana cowboy hall of fame is determined, the department of commerce and the department of transportation shall identify the city of Wolf Point the site as the location of the Montana cowboy hall of fame on official state maps. When existing road signs need replacement, the department of transportation shall provide appropriate markers to recognize the site.*

Approved April 8, 2011

CHAPTER NO. 166

[HB 594]

AN ACT REQUIRING THE DEPARTMENT OF TRANSPORTATION TO USE POSTCONSUMER RECYCLED MATERIAL IN A HIGHWAY CONSTRUCTION PROJECT WHEN THE POSTCONSUMER RECYCLED MATERIAL MEETS SPECIFICATIONS AND THE COST IS LESS THAN OR EQUAL TO THE COST OF OTHER MATERIALS.

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

Section 1. Use of postconsumer recycled materials in highway construction projects. (1) The department shall use postconsumer recycled material in federal and state highway construction projects, including but not limited to use as:

- (a) roadway fill material;
- (b) roadway aggregates;
- (c) bedding material;
- (d) foundation material; and
- (e) filter material.

(2) The department shall take procedural steps to provide for the incorporation of postconsumer recycled material into a highway project to ensure that:

- (a) road construction projects use postconsumer recycled material when the cost is less than or equal to the cost of other materials used for the same purpose; and
- (b) engineering standards demonstrate the acceptable use of postconsumer recycled material for a project.

(3) For the purposes of this section, "postconsumer recycled material" means recycled glass processed into glass cullet, reclaimed asphalt and concrete, and recycled tires.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 1].

Approved April 8, 2011

CHAPTER NO. 167

[HB 334]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; PROVIDING FOR CLOSURE OF CLAIMS; PROVIDING A PROCESS TO REOPEN MEDICAL CLAIMS; ESTABLISHING A MEDICAL DIRECTOR AND MEDICAL REVIEW PANEL; REVISING PERMANENT PARTIAL DISABILITY DEFINITION AND BENEFITS; CLARIFYING WHAT CONSTITUTES COURSE AND SCOPE OF EMPLOYMENT; ALLOWING RETROACTIVE BENEFIT PAYMENTS TO CERTAIN WORKERS; PROVIDING FOR SETTLEMENTS OF MEDICAL CLAIMS; PROVIDING FOR INSURER DESIGNATION OF TREATING PHYSICIANS; PROVIDING PAY SCALES FOR TREATING PHYSICIANS AND HEALTH CARE PROVIDERS; PROVIDING CERTAIN LIMITATIONS ON MEDICAL PAY SCHEDULES FOR THE BIENNIUM; REQUIRING THE LEGISLATIVE AUDITOR TO SUBMIT REPORTS ON THE MONTANA STATE FUND TO THE INSURANCE COMMISSIONER; REVISING VOCATIONAL REHABILITATION SERVICES AND TERMS TO ASSIST AN EMPLOYEE IN STAYING AT WORK OR RETURNING TO WORK; CREATING A STAY-AT-WORK/RETURN-TO-WORK ASSISTANCE FUND AND PROVIDING FOR ASSESSMENTS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 39-71-105, 39-71-116, 39-71-118, 39-71-225, 39-71-315, 39-71-320, 39-71-403, 39-71-407, 39-71-703, 39-71-704, 39-71-711, 39-71-721, 39-71-736, 39-71-741, 39-71-1011, 39-71-1025, 39-71-1031, 39-71-1101, 39-71-1102, 39-71-1106, AND 39-71-2361, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

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

Section 1. Section 39-71-105, MCA, is amended to read:

"39-71-105. Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

(1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to ~~assist~~ *provide assistance* to a worker at a reasonable cost to the employer. ~~Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.~~

(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers'

compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(4) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(5) This chapter must be construed according to its terms and not liberally in favor of any party.

(6) It is the intent of the legislature that:

(a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

(b) for occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than a single day or work shift and that it is within the legislature's authority to define an occupational disease and establish the causal connection to the workplace."

Section 2. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act necessary to:

- (a) investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Beneficiary" means:

- (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

- (b) an unmarried child under 18 years of age;
 - (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;
 - (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;
 - (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and
 - (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (4)(a) through (4)(e), does not exist.
- (5) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.
- (6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.
- (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.
- ~~(8) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.~~
- ~~(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.~~
- ~~(9)(8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:~~
- ~~(i) determine liability;~~
 - ~~(ii) apply the requirements of this title;~~
 - ~~(iii) settle workers' compensation or occupational disease claims; or~~
 - ~~(iv) determine survivor benefits.~~
- ~~(b) The term does not include an adjuster as defined in 33-17-102.~~
- ~~(9) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.~~
- ~~(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.~~
- (10) "Days" means calendar days, unless otherwise specified.
- (11) "Department" means the department of labor and industry.
- (12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or occupational disease.
- ~~(12)(13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.~~

(14) *“Health care provider” means a person who is 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.*

(13)(15) (a) *“Household or domestic employment” means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer’s family, including but not limited to housecleaning and yard work.*

(b) *The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.*

(16)(a) *“Indemnity benefits” means any payment made directly to the worker or the worker’s beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights.*

(b) *The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense reimbursements for items such as meals, travel, or lodging.*

(14)(17) *“Insurer” means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.*

(15)(18) *“Invalid” means one who is physically or mentally incapacitated.*

(16)(19) *“Limited liability company” has the meaning provided in 35-8-102.*

(17)(20) *“Maintenance care” means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status while minimizing recurrence of the clinical status.*

(18)(21) *“Medical stability”, “maximum medical improvement”, “maximum healing”, or “maximum medical healing” means a point in the healing process when further material functional improvement would not be reasonably expected from primary medical treatment services.*

(19)(22) *“Objective medical findings” means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.*

(20)(23) (a) *“Occupational disease” means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.*

(b) *The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.*

(21)(24) *“Order” means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.*

(22)(25) *“Palliative care” means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.*

(23)(26) *“Payroll”, “annual payroll”, or “annual payroll for the preceding year” means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer’s payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.*

(24)(27) “Permanent partial disability” means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment, *as determined by the sixth edition of the American medical association’s Guides to the Evaluation of Permanent Impairment, that is established by objective medical findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease and may not be based exclusively on complaints of pain;*

(b) is able to return to work in some capacity but the permanent impairment impairs the worker’s ability to work; and

(c) has an actual wage loss as a result of the injury.

(25)(28) “Permanent total disability” means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. ~~Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state.~~ Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(26)(29) “Primary medical services” means treatment prescribed by a *the* treating physician, for conditions resulting from the injury *or occupational disease*, necessary for ~~achieving~~ *achieving* medical stability.

(27)(30) “Public corporation” means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28)(31) “Reasonably safe place to work” means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29)(32) “Reasonably safe tools or appliances” are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(33) “*Regular employment*” means *work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state.*

(30)(34) (a) “Secondary medical services” means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection ~~(30)~~ (34), “disability” means a condition in which a worker’s ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker’s age, education, work history, and other factors that affect the worker’s ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31)(35) “Sole proprietor” means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32)(36) “State’s average weekly wage” means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.

~~(33)~~(37) “Temporary partial disability” means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

- (a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;
- (b) returns to work in a modified or alternative employment; and
- (c) suffers a partial wage loss.

~~(34)~~(38) “Temporary service contractor” means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client’s workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(35)~~(39) “Temporary total disability” means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(36)~~(40) “Temporary worker” means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(37)~~(41) “Treating physician” means *a the person who is who, subject to the requirements of 39-71-1101, is primarily responsible for delivery and coordination of the worker’s medical services for the treatment of a worker’s compensable injury or occupational disease* and is:

- (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;
- (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;
- (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(37)(a)~~ (41)(a), in the area where the physician assistant is located;
- (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;
- (e) a dentist licensed by the state of Montana under Title 37, chapter 4;
- (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections ~~(37)(a)~~ (41)(a) through ~~(37)(e)~~ (41)(e) who is licensed or certified in another state; or
- (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

~~(38)~~(42) “Work-based learning activities” means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

~~(39)~~(43) “Year”, unless otherwise specified, means calendar year.”

Section 3. Section 39-71-118, MCA, is amended to read:

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

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

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named

insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

~~(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;~~

~~(b)(a)~~ performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

~~(e)(b)~~ performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection ~~(2)(e)~~ ~~(2)(b)~~, "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

~~(d)(c)~~ serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection ~~(2)(e)~~ ~~(2)(b)~~.

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the

amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(5)(d)~~ (6)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 4. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, ~~medical~~ *health care* providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation.

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution; and

(d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 5. Section 39-71-315, MCA, is amended to read:

“39-71-315. Prohibited actions — penalty. (1) The following actions by a ~~medical~~ *health care* provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to certify the provision of the services or treatment for which compensation is claimed under this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.”

Section 6. Section 39-71-320, MCA, is amended to read:

“39-71-320. Voluntary certification program for claims examiners — purpose — rulemaking — advisory committee — continuing education.

(1) Pursuant to the public policy stated in 39-71-105, accurate and prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and ~~medical~~ *health care* providers. In order to further that public policy, the purpose of this section is to authorize the department to establish a voluntary certification program for claims examiners. The department shall administer the voluntary certification program.

(2) The voluntary certification program is intended to improve the handling of workers' compensation claims by:

(a) establishing minimum qualifications and procedures for certifying claims examiners;

(b) requiring continuing education for certified claims examiners;

(c) better educating certified claims examiners about changes in the law; and

(d) providing standards for the qualifications of instructors, courses, and materials.

(3) The department shall adopt rules for the certification of workers' compensation claims examiners, providing for:

(a) minimum qualifications;

(b) examination;

(c) 2-year certification and renewal;

(d) continuing education requirements; and

(e) a waiver of the examination requirement for an individual requesting certification as a claims examiner within the first 12 months after the department has adopted the initial rules under this subsection (3). The waiver is available only to an individual who has been actively engaged in the work of a claims examiner in this state, working on workers' compensation claims for 5 of

the 7 years immediately preceding the individual's application for certification under this section.

(4) The department may appoint an advisory committee composed of injured workers, insurers, self-insured employers, third-party administrators, claims examiners, and members of the public to advise the department on setting standards for certification and continuing education.

(5) The department shall maintain:

- (a) a list of all certified claims examiners; and
- (b) the following records related to certified claims examiners:
 - (i) documentation of current and historical certifications;
 - (ii) beginning and ending dates of certifications; and
 - (iii) continuing education records.

(6) The training curriculum and continuing education used by insurers, self-insured employers, and third-party administrators for claims examiners must relate to the state workers' compensation system or to interactions among injured workers, medical providers, and employers. The training curriculum, course content, instructors, materials, instructional format, and the sponsoring organization must be approved by the department as qualifying for use in certification of claims examiners. The department may offer specialized training for continuing education purposes that is exempt from the approval requirements of this subsection.

(7) The department shall determine the number of credit hours to be awarded for completion of an approved training curriculum or department-approved specialized training. The department may accept continuing education credits approved by the insurance commissioner's office as provided in Title 33, chapter 17, the office of public instruction, or the state bar of Montana to satisfy the continuing education requirements for renewal of the claims examiner certification. The department, in its discretion, may accept continuing education credits from other accrediting sources.

(8) The department shall by rule adopt fees commensurate with the costs of administering the voluntary certification program. All fees collected by the department as provided in this section must be deposited in the workers' compensation administration fund provided for in 39-71-201. The department may charge a fee for the certification program, including but not limited to fees for:

- (a) initial certification, including examination;
- (b) certification renewal;
- (c) approval of training curricula, including continuing education courses, course content, instructors, materials, instructional format, and sponsoring organizations; and
- (d) specialized training offered by the department."

Section 7. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies — election of plan by public corporations — financing of self-insurance fund — exemption for university system — definitions — rulemaking. (1) (a) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency

shall pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(b) (i) Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage workers' compensation insurance coverage for all state agencies.

(ii) The state fund shall provide the department of administration with all information regarding the state agencies' coverage.

(iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon mutual agreement between the department of administration and the state fund, the state fund shall issue one or more policies for all state agencies.

(iv) *In any year in which the workers' compensation premium due from a state agency is lower than in the previous year, the appropriation for that state agency must be reduced by the same amount that the workers' compensation premium was reduced and the difference must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium.*

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions that the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) For the purposes of subsection (1)(b), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.

(6) The department of administration may adopt rules to implement subsection (1)(b)(i).

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

(a) "Public corporation" includes the Montana university system.

(b) (i) "State agency" means:

(A) the executive branch and its departments and all boards, commissions, committees, bureaus, and offices;

(B) the judicial branch; and

(C) the legislative branch.

(ii) The term does not include the Montana university system."

Section 8. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers — limitations. (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) *An injury does not arise out of and in the course of employment when the employee is:*

(a) *on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or*

(b) *engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity or whose presence at the activity is required or requested by the employer. For the purposes*

of this subsection (2)(b), "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

~~(2)~~(3) (a) An insurer is liable for an injury, as defined in 39-71-119, *only* if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury *has occurred and* aggravated a preexisting condition.

~~(b)~~(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

~~(3)~~(4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

- (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

~~(4)~~(5) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

~~(5)~~(6) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

~~(6)~~(7) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

~~(7)~~(8) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

~~(8)~~(9) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 *if the employee is diagnosed with an a*

compensable occupational disease that arises out of or is contracted in the course and scope of employment.

~~(9) Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if:~~

~~(10) An insurer is liable for an occupational disease only if the occupational disease:~~

~~(a)(a) the occupational disease is established by objective medical findings; and~~

~~(b)(b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.~~

~~(10)(11) When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.~~

~~(11)(12) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:~~

~~(a) the time that the occupational disease was first diagnosed by a treating physician or medical panel health care provider; or~~

~~(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.~~

~~(12)(13) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.~~

~~(13)(14) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."~~

Section 9. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment ~~rating~~ *rating as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease that:*

(i) is not based exclusively on complaints of pain;

(ii) is established by objective medical findings; ~~and; and~~

(iii) *is more than zero.*

~~(iii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.~~

(2) ~~When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the~~ *When a worker receives a Class 2 or greater class of impairment as converted to the whole person, as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition, and has no actual wage loss as a result of the compensable injury or occupational disease, the worker is eligible to receive payment for an impairment award only.*

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by ~~375~~ 400 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the *whole person* impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is $66 \frac{2}{3}$ % of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum ~~conversions~~ *payments* for benefits not accrued may be reduced to present value at the rate established by the department pursuant to ~~39-71-741(3)~~ 39-71-741(5).

(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the

wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(10) As used in this section:

(a) “heavy labor activity” means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) “medium labor activity” means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) “light labor activity” means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) “sedentary labor activity” means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.”

Section 10. Section 39-71-704, MCA, is amended to read:

“39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury *or occupational disease* and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services, *including prescription drugs* for conditions ~~resulting from that are a direct result of the compensable injury or occupational disease,~~ for those periods ~~as the nature of the injury or the process of recovery requires specified in this section.~~

(b) ~~The~~ *Subject to the limitations in this chapter,* the insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a ~~medical~~ *health care* provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker’s medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a ~~medical~~ *health care* provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) ~~(i) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the~~ *The benefits provided for in this section terminate when they are not used for a period of 60 consecutive 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in [section 29].*

(ii) Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct result of a compensable injury or occupational disease.

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) (a) The department shall annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. *Regardless of the date of injury, payment for medical services is based on the fee schedule rates in this section in effect on the date on which the medical service is provided.* Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(b) (i) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by up to the top five insurers or third-party administrators providing group health insurance coverage within this state who use the resource-based relative value scale to determine fees for covered services. To be included in the rate determination, the insurer or third-party administrator must occupy at least 1% of the market share for group health insurance policies as reported annually to the state auditor.

(ii) The insurers or third-party administrators included under subsection (2)(b)(i) shall provide their standard conversion rates to the department.

(iii) The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).

(iv) The department shall maintain the confidentiality of the conversion rates.

(c) *From July 1, 2011, through June 30, 2013, the fee schedules established in subsection (2)(b) must be based on the following standards as adopted by the centers for medicare and medicaid services and as adopted by the department on December 31, 2010, regardless of where services are provided:*

(i) *the American medical association current procedural terminology codes;*

(ii) *the healthcare common procedure coding system;*

(iii) *the medicare severity diagnosis-related groups;*

(iv) *the ambulatory payment classifications;*

(v) *the ratio of costs to charges for each hospital;*

(vi) *the national correct coding initiative edits; and*

(vii) *the relative value units as adjusted annually using the most recently published resource-based relative value scale.*

~~(e)(d)~~ *The On or after July 1, 2013, the fee schedule rates established in subsection (2)(b) must be based on the following standards as adopted by the centers for medicare and medicaid services in effect at the time the services are provided, regardless of where services are provided:*

(i) *the American medical association current procedural terminology codes, as those codes exist on March 31 of each year;*

(ii) *the healthcare common procedure coding system, as those codes and their relative weights exist on March 31 of each year;*

(iii) *the medicare severity diagnosis-related groups, as those codes and their relative weights exist on October 1 of each year;*

(iv) *the ambulatory payment classifications, as those codes and their relative weights exist on March 31 of each year;*

(v) *the ratio of costs to charges for each hospital, as those codes exist on October 1 of each year;*

(vi) *the national correct coding initiative edits, as those codes exist on March 31 of each year; and*

(vii) *the relative value units as adjusted annually using the most recently in the published resource-based relative value scale, as those codes exist on March 31 of each year.*

~~(d)(e)~~ The department may establish additional coding standards codes and coding standards for use by providers when billing for medical services under this section.

(f) *The rates in effect through June 30, 2013, may not be less than the rates for medical services in effect as of December 31, 2010.*

(3) (a) The department ~~may~~ *shall* establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the *adopted* utilization and treatment guidelines ~~established by the department are correct medical treatment for the injured worker~~ *establish compensable medical treatment for an injured worker.*

(b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.

(c) The department ~~may establish by rule~~ *shall hire a medical director. The department may establish by rule* an independent medical review process ~~for~~ for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

(d) *The department, in consultation with health care providers with relevant experience and education, shall provide for an annual review of the evidence-based utilization and treatment guidelines to consider amendments or changes to the guidelines.*

(4) For services available in Montana, insurers may pay facilities located outside Montana according to the workers' compensation fee schedule of the state where the medical service is performed.

(5) (a) An insurer shall make payments at the fee schedule rate within 30 days of receipt of medical bills for which a claim has been accepted and for which no other disputes exist. Disputes must be defined by the department by rule.

(b) Any unpaid balance under this subsection (5) accrues interest at 12% a year or 1% a month or a fraction of a month. If the charge is not paid within 30 days, interest on the unpaid balance accrues from the date of receipt of the original billing.

(6) Once a determination has been made regarding the correct reimbursement amount, any overpayment made to a ~~medical~~ *health care* provider must be reimbursed to the insurer within 30 days of the determination. Any reimbursement amount remaining unpaid after 30 days accrues interest at 12% a year or 1% a month or a fraction of a month. Interest on the reimbursement amount remaining unpaid accrues from the date of receipt of the determination of the correct reimbursement amount.

(7) For a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge.

(8) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(9) After mediation pursuant to department rules, an unresolved dispute between an insurer and a ~~medical service~~ *health care* provider regarding the amount of a fee for medical services may be brought before the workers' compensation court.

(10) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (10), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

- (i) a treating physician;
- (ii) a physical therapist;
- (iii) a psychologist; or
- (iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (10)(a) if the visit is for treatment requested by an insurer."

Section 11. Section 39-71-711, MCA, is amended to read:

"39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the ~~current~~ *sixth* edition of the *American medical association Guides to the Evaluation of Permanent Impairment* ~~published by the American medical association;~~

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings *and may not be based exclusively on complaints of pain.*

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator if the injury falls within the scope of the evaluator's practice and if the evaluator is one of the following:

(a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to practice in one or more hospitals, if any, in the area where the physician or osteopath is located;

(b) a chiropractor licensed under Title 37, chapter 12;

(c) a physician assistant licensed under Title 37, chapter 20, if there is not a physician as provided for in subsection (2)(a) in the area where the physician assistant is located;

(d) a dentist licensed under Title 37, chapter 4;

(e) an advanced practice registered nurse licensed under Title 37, chapter 8;

or

(f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in subsections (2)(a) through (2)(e) who is licensed or certified in another state.

(3) If the claimant and insurer cannot agree upon the rating, the mediation procedure in Title 39, chapter 71, part 24, must be followed.

(4) Disputes over impairment ratings are subject to the provisions of 39-71-605."

Section 12. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death — limitation.

(1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer

shall recover the payments from the beneficiary's biweekly payments as provided in ~~39-71-741(3)~~ 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116(4)(a) through (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of death.

(3) To beneficiaries as defined in 39-71-116(4)(e) and (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(4)(b) through (4)(d).

(6) In all cases, benefits must be paid to beneficiaries.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702."

Section 13. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation — from what dates paid. (1) (a) ~~Compensation~~ *Except as provided in subsection (1)(c), compensation* may not be paid for the first 32 hours or 4 days' loss of wages, whichever is less, that the ~~claimant~~ *worker* is totally disabled and unable to work because of an injury. A ~~claimant~~ *worker* is eligible for compensation starting with the 5th day.

(b) Separate benefits of medical and hospital services must be furnished from the date of injury.

(c) *If the worker is totally disabled and unable to work in any capacity for 21 days or longer, compensation must be paid retroactively to the first day of total wage loss unless the worker waives the payment as provided in subsection (2)(b)(ii).*

(2) (a) For the purpose of this section, except as provided in subsection (3), ~~an~~ ~~injured~~ a worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 4-day waiting period.

(b) *A worker who is entitled to receive retroactive compensation benefits pursuant to subsection (1)(c) but who took sick leave as provided in subsection (2)(a) may elect to either:*

(i) *repay the employer the amount of salary for the sick leave received; or*

(ii) *waive the retroactive payment of benefits attributable to any days or hours for which the worker received sick leave.*

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

Section 14. Section 39-71-741, MCA, is amended to read:

"39-71-741. ~~Compromise settlements~~ Settlements and lump-sum payments — legislative intent. (1) By written agreement, a claimant and an insurer may convert benefits under this chapter ~~may be converted~~ in whole or in part into a lump sum. An agreement that settles a claim for any type of benefit is subject to department approval *as provided in subsection (2)*. Lump-sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection ~~(1)(e)~~ (2)(c), are not subject to department approval. If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved.

(2) The department shall directly notify a claimant of a department order approving or disapproving a claimant's ~~compromise settlement~~ or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve ~~an~~ a settlement agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any ~~permanent partial lump-sum conversion payment~~ in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection ~~(1)(b)~~ (2)(b) only if the department determines that the lump-sum ~~conversion~~ amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum ~~conversions payments~~ in part that are awarded to a claimant do not exceed \$20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(d) except as otherwise provided in this chapter, all other ~~compromise settlements and lump-sum payments~~ agreed to by a claimant and insurer; or

(e) medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability; or

(f) medical benefits on an accepted claim if the claimant has reached maximum medical improvement and the following applicable conditions are met:

(i) the insurer and claimant mutually agree to a settlement of all or a portion of medical benefits; and

(ii) a settlement is in the best interest of the parties to the settlement.

(3) The parties to a medical settlement agreement shall set out the rationale that is the basis for the settlement under subsection (2)(f), and the claimant shall indicate by a signed acknowledgment an understanding of what medical benefits will terminate because of that settlement.

(2)(4) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection (3)(b) (5)(b).

(3)(5) (a) An insurer may recoup any lump-sum payment advance amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(4)(6) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination.

(7) If an insurer and a claimant agree to a ~~compromise and release~~ settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision *without requesting mediation*.

(8) *The legislature does not intend to allow settlement of undisputed medical claims under subsection (2)(f) unless all parties willingly agree to the settlement. The failure of the parties to willingly agree to a settlement does not constitute a dispute concerning benefits.*

Section 15. Section 39-71-1011, MCA, is amended to read:

"39-71-1011. Definitions. As used in this chapter part, the following definitions apply:

(1) "Assistance fund" means the stay-at-work/return-to-work assistance fund provided for in [section 19].

(1)(2) "Commission on rehabilitation counselor certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation ~~practitioners~~ providers.

(2)(3) "Disabled worker" means a worker who has a permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(4) "Insurer's stay-at-work/return-to-work assistance policy" or "assistance policy" means a written stay-at-work/return-to-work policy that explains to the worker the process of evaluation, planning, implementation, and provision of services by the insurer prior to the determination that the worker meets the definition of a disabled worker. The services are intended to facilitate a worker's return to work as soon as possible following the worker's injury or occupational disease. This assistance may include a rehabilitation plan.

(3)(5) "Rehabilitation benefits" means benefits provided in 39-71-1006 and 39-71-1025.

(4)(6) "Rehabilitation plan" means a written individualized plan that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker's actual wage loss.

(5)(7) "Rehabilitation provider" means a rehabilitation counselor certified by the commission on rehabilitation counselor certification and designated by the insurer.

(6)(8) "Rehabilitation services" means a program of evaluation, planning, and implementation of a rehabilitation plan to assist a disabled worker to return to work.

(9) *"Stay-at-work/return-to-work assistance" or "assistance" means the evaluation, planning, implementation, and provision of appropriate services prior to the determination that the worker meets the definition of a disabled worker that are designed to facilitate a worker's return to work as soon as possible following the worker's injury or occupational disease. This assistance may include a rehabilitation plan."*

Section 16. Stay-at-work/return-to-work goals and options — notification by department — agreement between worker and insurer.

(1) The goal of stay-at-work/return-to-work assistance is to minimize avoidable disruption caused by a work-related injury or occupational disease by assisting the worker in the worker's return to the same position with the same employer or to a modified position with the same employer as soon as possible after an injury or an occupational disease occurs.

(2) To further the goal in subsection (1), the department shall, upon receipt from the insurer of a report of injury or occupational disease pursuant to 39-71-307(2), distribute to the worker a document that describes the stay-at-work/return-to-work assistance that is available upon request by the worker.

(3) Services provided as part of stay-at-work/return-to-work assistance are provided in addition to or prior to rehabilitation services and are intended to help a worker return to work.

Section 17. Request for and delivery of stay-at-work/return-to-work assistance. (1) (a) A worker who is claiming an injury or occupational disease, an employer, or a medical provider may ask that the department furnish stay-at-work/return-to-work assistance. After the worker signs a claim for benefits, the department shall promptly attempt to determine which insurer is at risk for the injury or occupational disease and contact that insurer. The department shall advise the insurer of the request for stay-at-work/return-to-work assistance and shall coordinate the assistance with the insurer.

(b) If an insurer has accepted liability for the claim, the insurer shall provide stay-at-work/return-to-work assistance either in accordance with the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services. The insurer is directly liable for paying for the stay-at-work/return-to-work assistance furnished.

(c) If an insurer at risk has not accepted liability for the claim, the insurer may choose one of the following actions:

(i) The insurer at risk for the claim may initiate stay-at-work/return-to-work assistance either in accordance with the insurer's

stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services and shall notify the department within 3 business days of being contacted by the department that the insurer is acting under this subsection (1)(c)(i). If the insurer provides either type of assistance, the insurer becomes responsible for directly paying for the assistance. Payment of assistance pursuant to this subsection (1)(c)(i) does not constitute admission of liability or a waiver of any right of defense.

(ii) If the insurer at risk for the claim does not notify the department within 3 business days of being contacted by the department that the insurer will provide assistance, the department shall obtain stay-at-work/return-to-work assistance for the worker by designating a rehabilitation provider.

(d) If the department cannot promptly determine which insurer is at risk for coverage, the department shall obtain stay-at-work/return-to-work assistance for the worker by designating a rehabilitation provider.

(e) A rehabilitation provider designated by the department under this section shall bill the department for services provided. The department shall pay for the stay-at-work/return-to-work assistance out of the assistance fund until the maximum allowed amount of assistance is provided or until the insurer denies the claim and notifies the department of the denial.

(f) If an insurer is providing assistance pursuant to the insurer's stay-at-work/return-to-work assistance policy, the insurer shall provide in writing to a worker, with a copy to the department, an explanation of the stay-at-work/return-to-work assistance being provided to the worker under this section and shall include contact information for the person providing the assistance.

(2) Rather than make a request to the department, a worker, an employer, or a medical provider may directly ask the insurer to provide stay-at-work/return-to-work assistance.

(3) In the absence of a request by a worker, an employer, or a medical provider, an insurer may initiate and provide stay-at-work/return-to-work assistance by providing the worker with a copy of the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services.

(4) Stay-at-work/return-to-work assistance requested under this section is available as a service apart from a determination regarding indemnity benefits. A worker or an employer may decline to accept stay-at-work/return-to-work assistance. The failure of a worker to voluntarily agree to assistance is not a dispute concerning benefits. However, if the assistance provided under this part results in a job offer for a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury and the worker refuses the offer, the workers' indemnity benefits may end as provided in 39-71-701 and 39-71-712.

(5) Stay-at-work/return-to-work assistance is available at any time unless:

(a) the worker, prior to a determination that the worker meets the definition of a disabled worker, has refused a job offer for a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury;

(b) the worker has actually returned to work; or

(c) the claim has been closed pursuant to 39-71-704(1)(f)(i) or indemnity benefits have been settled pursuant to the definition of a settled claim in 39-71-107.

(6) If the insurer determines that the worker has not suffered a compensable injury or occupational disease and denies liability for the claim, the insurer or the department shall terminate any stay-at-work/return-to-work assistance that was initiated before the insurer's denial of liability.

Section 18. Rehabilitation provider — evaluation. (1) Stay-at-work/return-to-work assistance must be provided by a rehabilitation provider pursuant to this section if:

(a) the department provides assistance; or

(b) an insurer elects to designate a rehabilitation provider instead of using the insurer's own stay-at-work/return-to-work assistance policy.

(2) (a) The rehabilitation provider shall evaluate and determine the stay-at-work/return-to-work capabilities of the worker pursuant to the stay-at-work/return-to-work goals listed in [section 16].

(b) If the worker has returned to work, the rehabilitation provider shall provide documentation of the assistance to the worker, the insurer, and the department.

(c) If the worker has not returned to work and has not received a job offer to return to work, the rehabilitation provider shall document the reasons the stay-at-work/return-to-work assistance was unsuccessful. The documentation must be provided to the worker, the insurer, the treating physician, and the department.

(d) The following conditions allow termination of assistance prior to the time a worker meets the definition of a disabled worker:

(i) the worker has returned to work earning wages that are at least as much as at the time of injury;

(ii) the worker has received an offer to return to work at a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury;

(iii) the worker has returned to work in an alternative position that pays less than the worker's wages at the time of injury and that qualifies the worker for temporary partial disability benefits pursuant to 39-71-712; or

(iv) the worker receives a job offer to return to work in a position that is within the worker's physical abilities, for which the worker is qualified, for which the wages are less than the worker's wages at the time of injury, and that qualifies the worker for temporary partial disability benefits under 39-71-712.

(e) If a worker has requested stay-at-work/return-to-work assistance and a rehabilitation plan has been agreed to by the worker and the insurer, the plan continues until completed.

(3) If the worker or insurer disputes the availability or level of assistance, the worker or insurer may, after mediation, petition the workers' compensation court for resolution of the dispute.

Section 19. Stay-at-work/return-to-work assistance fund — purpose — payment process — rulemaking. (1) There is a stay-at-work/return-to-work assistance fund in the proprietary fund category.

(2) The purpose of the assistance fund is to pay for stay-at-work/return-to-work assistance provided by the department so that assistance may be provided as early as practicable in the workers' compensation claims process.

(3) (a) The department may establish by rule:

(i) the amounts and types of assistance to be provided; and

(ii) the maximum hourly rate that may be charged for stay-at-work/return-to-work assistance obtained by the department and paid for by the assistance fund.

(b) The rules adopted under subsection (3)(a) regarding the payment amounts to rehabilitation providers do not apply if the insurer has taken direct responsibility for providing stay-at-work/return-to-work assistance.

(c) If rules are not adopted to implement subsection (3)(a), the department may not provide more than \$2,000 in assistance.

Section 20. Assessment for stay-at-work/return-to-work assistance fund — definition. (1) (a) The assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, and plan No. 3 an amount as provided in subsections (2) through (10).

(b) The board of investments shall invest the money in the assistance fund. The investment income must be deposited in the assistance fund.

(2) The assessment amount is the total amount paid by the assistance fund in the preceding fiscal year less other realized income that is deposited in the assistance fund. Allocation of the total assessment amount among employers insured by plan No. 1, plan No. 2, and plan No. 3 must be based on each plan's proportionate share of money expended from the assistance fund for the calendar year preceding the year in which the assessment is collected.

(3) On or before May 31 of each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. On or before April 30 of each year, the department shall consult with the advisory organization designated under 33-16-1023 and notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge rate to be effective for policies written or renewed on or after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is the amount actually expended by the assistance fund on behalf of injured workers employed by that plan No. 1 employer. A group of employers insured jointly under plan No. 1 is considered to be an individual employer for the purposes of this subsection.

(5) After subtracting plan No. 1 assessments from the total assessment, the department shall determine the surcharge rate for plan No. 2 insurers and plan No. 3, the state fund, by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided in subsection (9).

(6) Employers insured under plan No. 2 or plan No. 3 shall pay their portion of the assessment in a surcharge on premiums for policies written or renewed annually on or after July 1.

(7) (a) Each plan No. 2 insurer and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (5). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation stay-at-work/return-to-work assistance fund surcharge". Each assessment premium surcharge must be shown as a

percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner as the premium for the coverage. The assessment premium surcharge must be excluded from the definition of premium for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(b) If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge described in 39-71-201 first, then to the assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining amount applied to the premium due.

(8) (a) The department shall deposit all assessments due under this section into the assistance fund.

(b) Each plan No. 1 employer shall pay its assessment due under this section by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter no later than 20 days following the end of the quarter.

(d) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the assistance fund.

(9) Each year, the department shall compare the amount of the assessment premium surcharge actually collected pursuant to subsection (5) with the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator for the following year's assessment premium surcharge as provided in subsection (5).

(10) If the total assessment is less than \$100,000 for any year, the department may defer the assessment for that year and add that amount to the assessment amount for the subsequent year.

(11) As used in this section, "money expended" means expenditures for stay-at-work/return-to-work assistance from the assistance fund.

Section 21. Rulemaking authority. The department may adopt rules to implement this part.

Section 22. Section 39-71-1025, MCA, is amended to read:

"39-71-1025. Auxiliary rehabilitation benefits. (1) In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of \$4,000, *adjusted as provided in subsection (2)*, may be paid by the insurer for *specialized job modification*, reasonable travel, and relocation expenses used ~~to~~ *for any of the following*:

- (1)(a) search for new employment;
- (2)(b) return to work but in a new location;

~~(3)(c) implement the implementation of a rehabilitation plan that has been filed with the department; and or~~

~~(4)(d) attend attendance at an on-the-job training program.~~

~~(2) The separate benefit may be adjusted by an amount that is the percentage increase, if any, in the current state's average weekly wage over the state's average weekly wage adopted for the previous year."~~

Section 23. Section 39-71-1031, MCA, is amended to read:

"39-71-1031. Exchange of information. The insurer's designated insurer, the rehabilitation provider, and the department shall provide to one another case information as necessary to carry out the purposes of this part."

Section 24. Section 39-71-1101, MCA, is amended to read:

"39-71-1101. Choice of physician health care provider by worker — change insurer designation or approval of treating physician — receipt of care from or managed care organization — payment terms — definition. (1) ~~Subject to subsection (3),~~ Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (7), a worker may choose ~~the~~ a person who is listed in 39-71-116(41) for initial treating physician within the state of Montana treatment. Subject to subsection (2), if the person listed under 39-71-116(41) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.

(2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the responsibilities of the treating physician. The designated or approved treating physician:

(a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;

(b) shall provide timely determinations required under this chapter, including but not limited to maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide documentation;

(c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment; and

(d) shall conduct or arrange for timely impairment ratings.

(3) The treating physician may refer the worker to other health care providers for medical services, as provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health care provider to whom the worker is referred by the designated treating physician is not responsible for coordinating care or providing determinations as required of the treating physician.

(4) The treating physician designated or approved by the insurer must be reimbursed at 110% of the department's fee schedule.

(5) A health care provider to whom the worker is referred by the treating physician must be reimbursed at 90% of the department's fee schedule.

(6) A health care provider providing health care on a compensable claim prior to the designation or approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.

~~(2) Authorization by the insurer is required to change treating physicians. If authorization is not granted, the~~

(7) *Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the department in 39-71-704 and the percentages referenced in subsections (4) through (6) apply to the medical service on the date on which the medical service was provided.*

(8) *The insurer shall may direct the worker to a managed care organization, if any, or to a medical service provider who qualifies as a treating physician, who shall then serve as the worker's or a preferred provider organization for designation of the treating physician.*

~~(3)~~(9) *A medical service After the insurer directs a worker to a managed care organization or preferred provider organization, a health care provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer, if:*

(a) *the injury results in a total loss of wages for any duration;*

(b) *the injury will result in permanent impairment;*

(c) *the injury results in the need for a referral to another medical provider for specialized evaluation or treatment; or*

(d) ~~specialized diagnostic tests, including but not limited to magnetic resonance imaging, computerized axial tomography, or electromyography, are required.~~

~~(4)~~(10) *After the date that a worker whose injury is subject to the provisions of subsection ~~(3)~~ (8) receives individual written notice of a referral to a managed care organization, the worker must, unless otherwise authorized by the insurer, receive medical services from the managed care organization designated by the insurer, in accordance with 39-71-1102 and 39-71-1104. The designated treating physician in the managed care organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a medical service health care provider who is not a member of a managed care organization or a preferred provider organization.*

~~(5)~~(11) *Posting of managed care requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to a managed care organization must be provided to the worker in written form by mail or in person after the date that the of injury or occupational disease meets the provisions of subsection ~~(3)~~. The notice must advise the worker of the worker's right to choose the initial treating physician under subsection (1).*

(6) *Any postings or other information regarding referral to a managed care organization on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to a managed care organization, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection (1)."*

Section 25. Section 39-71-1102, MCA, is amended to read:

"39-71-1102. Preferred provider organizations — establishment — limitations. (1) In order to promote cost containment of medical care provided for in 39-71-704, development of preferred provider organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and durable medical goods and medical health care providers in addition to or in

conjunction with managed care organizations. Workers' compensation insurers may contract with other entities to use the other entities' preferred provider organizations. After the date that an injured worker is given an individual written notice by the insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers. ~~This section does not prohibit the worker from choosing the initial treating physician under 39-71-1101(1).~~

(2) Posting of preferred provider requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to preferred providers must be provided to the worker in written form by mail or in person after the date of injury. ~~The notice must advise the worker of the worker's right to choose the initial treating physician under 39-71-1101(1).~~

~~(3) Any postings or other information regarding referral to preferred providers on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to preferred providers, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection 39-71-1101(1)."~~

Section 26. Section 39-71-1106, MCA, is amended to read:

"39-71-1106. Compliance with medical treatment required — termination of compensation benefits for noncompliance. An insurer that provides 14 days' notice to the worker and the department may terminate any compensation benefits that the worker is receiving until the worker cooperates, if the insurer believes that the worker is unreasonably refusing:

(1) to cooperate with a managed care organization, *a preferred provider organization*, or *the* treating physician;

(2) to submit to medical treatment recommended by the treating physician, except for invasive procedures; or

(3) to provide access to health care information to ~~medical health care~~ providers, the insurer, or an agent of the insurer."

Section 27. Section 39-71-2361, MCA, is amended to read:

"39-71-2361. Legislative audit of state fund — annual review of audit and rate review by insurance commissioner. The legislative auditor shall annually:

(1) conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

(2) *provide the results of the financial and compliance audit for operations related to claims for injuries resulting from accidents on or after July 1, 1990, as provided in subsection (1), and the rate review as provided in 39-71-2362 to the insurance commissioner. The insurance commissioner shall review the financial and compliance audit and rate review and report any concerns or recommendations based on the review to the governor, the legislative audit committee, and the economic affairs interim committee.*"

Section 28. Medical status form. (1) The department shall create a medical status form to be provided to a health care provider providing treatment for a compensable injury or occupational disease.

(2) The form must contain, at a minimum, the following information:

- (a) the worker's first and last names and claim number;
- (b) the diagnosed condition that is a direct result of the compensable injury or occupational disease;
- (c) the treatment plan for the worker;
- (d) identification of any medications prescribed for treatment of the worker;
- (e) the timeframe during which the treating physician recommends that the worker be completely off work;
- (f) the date or anticipated date of the worker's release to modified duty;
- (g) the date or anticipated date of the worker's release to full duty;
- (h) any temporary work restrictions applicable to the worker;
- (i) any permanent work restrictions applicable to the worker;
- (j) the anticipated date of maximum medical improvement; and
- (k) the date of the worker's next appointment.

(3) An insurer may request additional information from the health care provider not contained in the department's form.

(4) The treating physician or a designee shall complete the form following every office visit with the worker.

Section 29. Reopening of terminated medical benefits — medical review. (1) A petition to reopen medical benefits that terminate under 39-71-704(1)(f) must be reviewed as provided in this section.

(2) Medical benefits may be reopened only if the worker's medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to work. Medical benefits closed by settlement or court order are not subject to reopening.

(3) A review of a petition to reopen medical benefits must be conducted by a medical review panel as provided in subsection (4) or, if stipulated by the worker and the insurer, solely by the department's medical director.

(4) The medical review panel must be composed of the department's medical director and two additional physicians who are licensed to practice medicine in Montana and who have expertise and experience in the area of medicine that is relevant to the worker's condition. The department's medical director shall serve as the presiding officer of the medical review panel. Participants on the medical review panel must be reimbursed as provided in 2-18-501 through 2-18-503 if travel is required for a review and must be paid a reasonable fee for services.

(5) A petition for reopening of medical benefits must be filed with the department within 5 years of the termination of medical benefits pursuant to 39-71-704(1)(f). A petition may not be filed more than 90 days before benefits are to terminate.

(6) Upon receipt of a petition to reopen medical benefits, the department shall request from the insurer a copy of the worker's medical records contained in the insurer's claim file. The worker or the insurer may submit additional information that is relevant to the petition to reopen medical benefits.

(7) The proof necessary to support reopening of medical benefits must be a preponderance of the evidence.

(8) Within 60 days of the submission of a petition to reopen medical benefits, the medical review panel or the department's medical director shall issue a report. The report must provide the rationale for the decision reached. A report issued by the medical review panel must be supported by a majority of the panel members. If the report concludes that medical benefits must be reopened, the report must state the extent to which the benefits must be reopened consistent with the utilization and treatment guidelines. Benefits reopened pursuant to this section remain open for 2 years or until maximum medical improvement is achieved following surgery or the recommended medical treatment, whichever occurs first. If the medical panel specifically approves treatment beyond 2 years, medical benefits remain open for as long as recommended by the medical panel. The petitioner and the insurer shall submit updated information to the medical panel every 2 years, and every subsequent 2 years the medical panel shall review the claims that were reopened for longer than 2 years to determine whether to change the previous recommendation.

(9) A party aggrieved by a decision of the department's medical director or medical review panel may, after satisfying the dispute resolution requirements provided in this chapter, file a petition with the workers' compensation court. The report of the department's medical director or the medical review panel is presumed to be correct and may be overcome only by clear and convincing evidence.

Section 30. Transition for stay-at-work/return-to-work assistance fund. (1) The department of labor and industry shall transfer \$100,000 from the administration fund provided for by 39-71-201 to the stay-at-work/return-to-work assistance fund established in [section 19] to provide the initial funding for the fund.

(2) Effective for policies written or renewed in state fiscal year 2012 only, the premium surcharge rate to be levied by insurers on workers' compensation insurance premiums pursuant to [section 20] is 0.00082.

Section 31. Codification instruction. (1) [Sections 16 through 21 and 28] are intended to be codified as an integral part of Title 39, chapter 71, part 10, and the provisions of Title 39, chapter 71, part 10, apply to [sections 16 through 21 and 28].

(2) [Section 29] is intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to [section 29].

Section 32. Saving clause. Except as provided in [section 24], [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 33. Severability — nonseverability. (1) 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.

(2) It is the intent of the legislature that [sections 15 through 23] are essentially dependent upon each other and that if one or more of these sections are held invalid or unconstitutional, the other sections specified in this subsection are also invalid.

(3) It is the intent of the legislature that if any one of the amendments made by [section 14] regarding settlement of undisputed medical benefits is held invalid or unconstitutional, the other amendments in [section 14] and [section 35(3)] regarding settlement of undisputed medical benefits are invalid so that settlement of undisputed medical benefits is no longer permitted.

Section 34. Effective date. [This act] is effective on passage and approval.

Section 35. Applicability — retroactive applicability. (1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] apply to injuries occurring on or after July 1, 2012.

Approved April 12, 2011

CHAPTER NO. 168

[HB 508]

AN ACT REVISING COMPENSATION FOR RURAL FIREFIGHTERS; PROVIDING PAYMENT OF A PARTIAL SALARY TO RURAL FIREFIGHTERS WHO ARE INJURED IN THE PERFORMANCE OF THEIR DUTIES; AND LIMITING THE PAYMENT OF THE PARTIAL SALARY TO FULL-PAID EMPLOYEES UNDER CERTAIN CIRCUMSTANCES.

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

Section 1. Payment of partial salary to rural firefighter injured in performance of duty. (1) A full-paid firefighter who is an employee of a rural fire district and who is injured in the performance of the firefighter's duty must be paid by the fire district the difference between the firefighter'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 firefighter must require medical or other remedial treatment and must be incapable of performing the firefighter's duties as a result of the injury.

(3) This section does not apply to a volunteer firefighter or a part-paid firefighter.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 21, and the provisions of Title 7, chapter 33, part 21, apply to [section 1].

Approved April 12, 2011

CHAPTER NO. 169

[SB 222]

AN ACT REVISING QUALIFICATIONS OF FIREFIGHTERS; AND AMENDING SECTIONS 7-33-4107 AND 7-33-4108, MCA.

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

Section 1. Section 7-33-4107, MCA, is amended to read:

“7-33-4107. Qualifications of firefighters. The state of Montana determines that ~~age is a valid, bona fide occupational qualification for the position of firefighter because of the rigorous physical demands of~~ *qualifications for the firefighting profession must recognize the rigorous physical demands placed on firefighters and the expectation of many years of emergency service.* ~~The qualifications of firefighters shall be that they~~ *To qualify as a firefighter, an applicant:*

~~(1) shall not be more than 34 years of age at the time of original appointment;~~
~~(2) shall have passed a physical examination by a practicing physician duly authorized to practice in this state; and~~

~~(3) at the option of said city or town, shall be qualified voters of the city or town~~

(1) must be a citizen of the United States;

(2) must be at least 18 years of age;

(3) must be a high school graduate or have passed the general educational development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(4) must possess or be eligible for a valid Montana driver's license;

(5) shall pass a physical examination by a qualified physician, physician assistant, or advanced practice registered nurse, who is not the applicant's personal physician, physician assistant, or advanced practice registered nurse, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect the applicant's performance of the duties of a firefighter;

(6) must be fingerprinted and a search must be made of the local, state, and national fingerprint files to disclose any criminal record; and

(7) may not have been convicted of a crime for which the applicant could have been imprisoned in a federal or state penitentiary.”

Section 2. Section 7-33-4108, MCA, is amended to read:

“7-33-4108. Physical examination. The examination required by 7-33-4107~~(2)~~~~(5)~~ ~~shall~~ *must be in writing and a written determination of the examination must be filed with the city or town clerk. Such* ~~Such~~ *The determination of the examination shall* ~~must~~ *disclose the ability of such the applicant to perform the physical work usually required of firefighters in the performance of their duty.”*

Approved April 12, 2011

CHAPTER NO. 170

[HB 66]

AN ACT CLARIFYING THAT THE STATE RECORDS COMMITTEE IS ADMINISTERED BY THE SECRETARY OF STATE; PROVIDING THAT THE SECRETARY OF STATE'S REPRESENTATIVE IS THE PRESIDING OFFICER; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 2-6-203 AND 2-15-1013, MCA.

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

Section 1. Section 2-6-203, MCA, is amended to read:

"2-6-203. Secretary of state's powers and duties — rulemaking authority. (1) In order to ~~insure~~ *ensure* the proper management and safeguarding of public records, the secretary of state shall ~~undertake the following:~~

(a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;

(e) operate a central microfilm unit ~~which~~ *that* will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state; ~~and~~

(f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies; *and*

(g) *adopt rules regarding management of public records.*

(2) Upon request, the secretary of state shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch."

Section 2. Section 2-15-1013, MCA, is amended to read:

"2-15-1013. Records committee — composition and meetings. (1) There is a committee to be known as the state records committee composed of representatives of:

(a) the department of administration;

(b) the legislative auditor;

(c) the attorney general;

(d) the secretary of state; and

(e) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments shall *must* be submitted in writing to the secretary of state.

(3) The committee shall meet at least quarterly.

(4) Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in

committee activities as provided for in 2-18-501 through 2-18-503. ~~Such expenses shall~~ *Expenses must* be paid from the appropriations made for operation of their respective agencies.

(5) *The state records committee is administered by the secretary of state, and the secretary of state's representative serves as the presiding officer for the committee.*"

Section 3. Directions to code commissioner. Section 2-15-1013 is intended to be renumbered and codified as an integral part of Title 2, chapter 6, part 2.

Approved April 14, 2011

CHAPTER NO. 171

[HB 421]

AN ACT EXPANDING THE RANGE OF ORGANIZATIONS THAT ARE ALLOWED TO ADMINISTER ADULT BASIC EDUCATION PROGRAMS; AND AMENDING SECTIONS 20-7-702 AND 20-7-712, MCA.

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

Section 1. Section 20-7-702, MCA, is amended to read:

"20-7-702. Authorization to establish adult education program programs. The trustees of a district or community college district may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, ~~K-12~~ career and ~~vocational/technical~~ *technical* education, vocational-technical education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees."

Section 2. Section 20-7-712, MCA, is amended to read:

"20-7-712. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school *district*, community college district, ~~or accredited~~ tribal college, *public library, community-based organization, or a consortium of those organizations* located in Montana.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees *or authorized representative* of any district or tribal college may apply to the superintendent for funds for its adult basic education ~~courses~~ *program*. The financial administration, ~~and~~ accounting, ~~and reporting~~ of adult basic education funds ~~must be the same as that of adult education~~ *conform to policies established by the office of public instruction.*"

Approved April 14, 2011

CHAPTER NO. 172

[HB 480]

AN ACT ALLOWING THE APPOINTMENT OF A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT NOT OF RECORD, ANY ATTORNEY, OR THE

CLERK OF THE JUSTICE'S COURT OF RECORD TO ACT AS A JUDGE PRO TEMPORE IN A JUSTICE'S COURT OF RECORD; AND AMENDING SECTION 3-10-116, MCA.

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

Section 1. Section 3-10-116, MCA, is amended to read:

“3-10-116. Disqualification of justice of peace for justice’s court of record — judge pro tempore. (1) When a justice of the peace for a justice’s court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice’s court of record, *another justice of the peace for a justice’s court not of record*, a municipal court judge, a retired justice of the peace for a justice’s court of record, a retired municipal court judge, or an attorney, ~~of the county in which the court is located~~ or the clerk of the justice’s court of record to act as a judge pro tempore.

(2) (a) ~~The~~ *Except as provided in subsection (2)(b), the judge pro tempore has the same power and authority as the justice of the peace for the justice’s court of record.*

(b) *A clerk of a justice’s court of record acting as a judge pro tempore may not preside over a trial but may preside over an initial appearance.”*

Approved April 14, 2011

CHAPTER NO. 173

[HB 547]

AN ACT PROVIDING INSURANCE COVERAGE FOR ADVANCED PRACTICE REGISTERED NURSES AND REGISTERED NURSE FIRST ASSISTANTS IN A MANNER SIMILAR TO PHYSICIAN ASSISTANTS; INCLUDING REGISTERED NURSE FIRST ASSISTANTS AS PROVIDERS IN HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING THE BOARD OF NURSING TO SPECIFY CRITERIA FOR A REGISTERED NURSE FIRST ASSISTANT; AMENDING SECTIONS 33-22-114, 33-31-102, AND 37-8-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 33-22-114, MCA, is amended to read:

“33-22-114. Coverage required for services provided by physician assistants, advanced practice registered nurses, and registered nurse first assistants. An insurer, a health service corporation, or any employee health and welfare fund that provides accident or health insurance benefits to residents of this state shall provide, in group and individual insurance contracts, coverage *as well as payment or reimbursement* for health services provided by:

(1) a physician assistant as normally covered by contracts for services supplied by a physician if health care services that the physician assistant is approved to perform are covered by the contract;

(2) *an advanced practice registered nurse, defined in 37-8-102, as normally covered by contracts for services supplied by a physician or a physician assistant if health care services that the advanced practice registered nurse is approved to perform are covered by the contract; and*

(3) *a registered nurse first assistant, licensed under Title 37, chapter 8, as normally covered by contracts for surgical services supplied by a physician, a physician’s assistant, or an advanced practice registered nurse if surgical*

services that the registered nurse first assistant is approved to perform are covered by the contract.”

Section 2. Section 33-31-102, MCA, is amended to read:

“33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Affiliation period” means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) “Basic health care services” means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children’s eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132;

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and

(k) treatment and medical foods for inborn errors of metabolism. “Medical foods” and “treatment” have the meanings provided for in 33-22-131.

(3) “Commissioner” means the commissioner of insurance of the state of Montana.

(4) “Dependent” has the meaning provided in 33-22-140.

(5) “Enrollee” means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(6) “Evidence of coverage” means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(7) “Health care services” means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(9) (a) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(b) The term does not apply to a PACE organization that has received a waiver pursuant to 33-31-201.

(10) "Insurance producer" means an individual or business entity appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(11) "PACE organization" means an organization, as defined in 42 CFR 460.6, that is authorized by the centers for medicare and medicaid services and the department of public health and human services to operate a program of all-inclusive care for the elderly.

(12) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(13) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(14) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(15) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, ~~or~~ advanced practice registered nurse, as specifically listed in 37-8-202, *or registered nurse first assistant as defined by the board of nursing under Title 37, chapter 8*, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(16) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(17) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

(18) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 3. Section 37-8-202, MCA, is amended to read:

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

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) *adopt rules to define criteria for the recognition of registered nurses who are certified through a nationally recognized professional nursing organization as registered nurse first assistants; and*

(j) establish a program to assist licensed nurses who are found to be impaired by mental illness, habitual intemperance, or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications,

responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter.”

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved April 14, 2011

CHAPTER NO. 174

[HB 566]

AN ACT REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SQUARE THE NUMBER OF POINTS PURCHASED BY AN APPLICANT WHEN CONDUCTING LICENSE AND PERMIT DRAWINGS; AMENDING SECTION 87-1-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-1-301, MCA, is amended to read:

“87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), “landowner tolerance” means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner’s property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) (a) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

~~(a)(i)~~ giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

~~(b)(ii)~~ giving a qualifying landowner a preference in drawings. As used in this subsection ~~(5)(b)~~ (5)(a), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(b) *The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.*

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.”

Section 2. Effective date. [This act] is effective March 1, 2012.

Approved April 14, 2011

CHAPTER NO. 175

[SB 74]

AN ACT CONFORMING CERTAIN TERMS REGARDING THE FINANCIAL STATUS OF COMMODITY DEALERS AND COMMODITY WAREHOUSE OPERATORS TO TERMS USED IN GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REVISING AND CLARIFYING THE LICENSING REQUIREMENTS FOR COMMODITY DEALERS; ALLOWING FOR FULL OR 110% BONDING BY A COMMODITY DEALER OF COMMODITIES PURCHASED ON CONTRACT; AMENDING SECTIONS 80-4-402, 80-4-405, 80-4-421, 80-4-502, 80-4-505, 80-4-506, 80-4-601, AND 80-4-604, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 80-4-402, MCA, is amended to read:

“80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) “Agent” means a person who contracts for or solicits any agricultural commodities from a producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity on behalf of a commodity dealer.

(2) “Agricultural commodity” means any grain, oil seed crops, seed, or other crops designated by rule of the department.

(3) “Bailment” means the transfer, by written or verbal contract, of an agricultural commodity by an owner of a commodity to a producer for the purpose of obtaining the producer’s services in planting, growing, harvesting, or delivering back to the owner the agricultural commodity. The term includes any one or all of the enumerated transactions, whether title passes or not.

(4) “Bond” means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(5) (a) “Commodity dealer” means a person who engages in a business involving or, as part of the business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, bailment, or transfer of any agricultural commodity in the state of Montana.

(b) The term does not include:

(i) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(ii) a person who buys agricultural commodities from a licensed commodity dealer;

(iii) a person who does not purchase more than \$30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the \$30,000 exemption, the person shall obtain a license and is not eligible for the exemption for the succeeding year;

(iv) a person who is the producer of agricultural commodities that the person actually plants, nurtures, and harvests;

(v) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange; or

(vi) a person who buys agricultural commodities used exclusively for the feeding of livestock ~~and not for resale~~.

(6) "Delayed payment contract" means a written contract for the sale of an agricultural commodity when the purchase price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.

(7) "Department" means the department of agriculture provided for in 2-15-3001.

(8) "Depositor" means a person who delivers an agricultural commodity to a commodity dealer for sale, who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment, who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural commodity.

(9) "Director" means the director of the department of agriculture.

(10) "*Equity*" means the residual interest in the assets of a person that remains after deducting the liabilities of the person under generally accepted accounting principles.

~~(10)~~(11) "FGIS" means the federal grain inspection service, a program administered by the federal grain inspection, packers, and stockyards administration (GIPSA).

~~(11)~~(12) "Grain" means all grains for which standards have been established under the Grain Standards Act and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that may be designated by rule of the department.

~~(12)~~(13) "Grain standards" means the official standards of quality and condition of grain that establish the grades defined by the Grain Standards Act or those standards adopted by department rule.

~~(13)~~(14) "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through 87.

~~(14)~~(15) "Inspector" means a person designated by the director to assist in the administration of parts 4 through 7 of this chapter. The term includes warehouse auditors or examiners.

~~(15)~~(16) "Official agricultural commodity inspectors" means official personnel who perform or supervise the performance of official inspection services and certify the results of inspections, including the grade of agricultural commodities.

~~(16)~~(17) "Official agricultural commodity samplers" or "samplers" means official personnel who perform or supervise the performance of official sampling services and certify the results of the sampling.

~~(17)~~(18) "Official agricultural commodity weighers" means official personnel who perform or supervise the performance of class X or class Y weighing services

and certify the results of the services, including the weight of the agricultural commodity.

(18)(19) "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

(19)(20) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(20)(21) "Public warehouse" or "warehouse" means an elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities that commingle commodities belonging to different lots of agricultural commodities.

(21)(22) "Purchase contract" means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.

(22)(23) "Purchase price" means the final price after premiums and discounts are assessed.

(23)(24) "Receipt" means a warehouse receipt.

(24)(25) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

(25)(26) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(26)(27) "Subterminal warehouse" means a warehouse where an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(27)(28) "Terminal grain warehouse" means a warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(28)(29) "Warehouse operator" means a person operating or controlling a public warehouse.

(29)(30) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouse operator, except scale weight tickets.

(31) "*Working capital*" means the excess of current assets over current liabilities under generally accepted accounting principles."

Section 2. Section 80-4-405, MCA, is amended to read:

"80-4-405. Maximum bond amount. The maximum amount of any public warehouse operator bond may not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$1 million, except:

(1) any bonds compensating for ~~net asset equity or working capital~~ deficiencies prescribed in parts 5 and 6 of this chapter must be added to the maximum bond amount. ~~In the event that~~ If the public warehouse operator is also licensed as a commodity dealer, only one ~~net asset deficiency bond~~ amount is required.

(2) the maximum bond amount must be adjusted each year based upon the percentage increase or decrease in the annual average index of prices received

by Montana farmers for food and feed grains as computed by the Montana crop and livestock reporting service.”

Section 3. Section 80-4-421, MCA, is amended to read:

“80-4-421. License suspension and revocation — renewal. (1) The department may revoke, suspend, or modify a commodity warehouse operator’s or commodity dealer’s license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of parts 4 through 7 of this chapter:

(a) failure to maintain all initial licensing requirements, including insurance, bonding, ~~and net-asset equity~~, *and working capital* requirements. In determining compliance with ~~net-asset equity and working capital~~ requirements, the department may consider the licensee’s status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.

(b) aiding or abetting another person in the violation of the licensure or any other provisions of parts 4 through 7 of this chapter;

(c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1, part 2;

(d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;

(e) failure or refusal to post storage and other charges as filed with the department;

(f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;

(g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525 and 80-4-527;

(h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under 80-4-531;

(i) discrimination in charges by a warehouse operator as provided in 80-4-524;

(j) failure to provide payment for any agricultural commodity;

(k) failure to satisfy a judgment entered as a result of a violation of this chapter;

(l) violation of or failure or refusal to comply with any other provision of parts 4 through 7 of this chapter or any rule adopted by the department pursuant to parts 4 through 7; or

(m) failure to assess, report, or pay an assessment authorized and required pursuant to Title 80, chapter 4 or 11.

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouse operator or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause, the department shall consider the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

(b) does not satisfy the bonding, insurance, ~~or net-asset equity~~, *or working capital* requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant that the department subsequently determines incorrect is void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631.”

Section 4. Section 80-4-502, MCA, is amended to read:

“80-4-502. Licenses to warehouse operator — issuance — renewal — conditions precedent. (1) The department is authorized to issue or renew, upon application, a license to any warehouse operator for the conduct of a warehouse or warehouses in accordance with parts 5 and 6 of this chapter, provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouse operator. The insurance ~~shall~~ *must* insure the commodities for the full market value at the time of loss of ~~such the~~ commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored ~~therein~~ *in the warehouse*.

(c) A license fee must be submitted to the department as prescribed by 80-4-503.

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by 80-4-504 and 80-4-505.

(f) ~~(i) The~~ *Except as provided in subsection (1)(f)(ii), the* applicant has submitted to the department a current financial statement prepared by a licensed accountant according to generally accepted accounting principles, showing that the applicant has and ~~does maintain current assets equal to or greater than current liabilities~~ *maintains positive working capital. Applicants not having adequate current assets equal to or greater than current liabilities*

~~(ii) An applicant without positive working capital may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of \$2,000 for each \$1,000 of deficit. The bond or equivalent must be required in this subsection (1)(f)(ii) is~~ *in addition to the bond amount required in 80-4-505.*

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

(h) The applicant must have complied with the terms of this part and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of \$50 if the documents are filed

within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to 80-4-503.”

Section 5. Section 80-4-505, MCA, is amended to read:

“80-4-505. Amount of bond — cancellation. (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than \$20,000 or more than the maximum prescribed in 80-4-405. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouse operator is also operating as a commodity dealer, the warehouse operator shall also provide a bond as prescribed in 80-4-604.

(3) If ~~there occurs~~ a deficiency *occurs* in ~~net assets as the equity~~ required under 80-4-506, there ~~shall~~ *must* be added to the amount of bond determined in accordance with subsection (1) an amount equal to that deficiency.

(4) Each warehouse operator bond ~~shall run~~ *runs* continuously with the license until canceled by the bonding company.

(5) A 60-day written notice must be given to the department by the bonding company before any bond is canceled; however, the cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.”

Section 6. Section 80-4-506, MCA, is amended to read:

“80-4-506. Net-asset Equity requirements. (1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total ~~net assets~~ *equity* liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that the licensee’s or applicant’s warehouse or warehouses can accommodate.

(2) A person may not be licensed as a warehouse operator unless the person has and maintains allowable ~~net assets~~ *positive equity* of at least \$10,000.

(3) Assets must be valued at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(4) In determining total ~~net assets~~ *equity*, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(5) If a warehouse operator is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight that all warehouses will accommodate must be considered in determining whether the warehouse operator meets the ~~net-asset~~ *equity* requirements specified in this section.”

Section 7. Section 80-4-601, MCA, is amended to read:

“80-4-601. Commodity dealer license requirements — financial responsibility. (1) A person may not engage in the business of a commodity

dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) (a) A license application must include the following:

~~(a)~~(i) the name of the applicant;

~~(b)~~(ii) the names of the officers and directors if the applicant is a corporation;

~~(c)~~(iii) the names of the partners if the applicant is a partnership;

~~(d)~~(iv) the location of the principal places of business;

~~(e)~~(v) a sufficient and valid bond as specified in 80-4-604, *plus the bond specified in subsection (5)(a)(i) or (5)(a)(ii) if applicable, or as specified in subsection (5)(a)(iii)*;

~~(f) the number and description of trucks or tractor-trailer units owned or leased by the applicant that will be used in the transportation of agricultural commodities purchased pursuant to the provisions of this part;~~

~~(g)(vi) a complete financial statement prepared by a licensed accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and net worth equity; and. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. Applicants not having adequate current assets equal to or greater than current liabilities may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of \$2,000 for each \$1,000 of deficit. The bond or equivalent must be in addition to the bond amount required in 80-4-604.~~

~~(h)(vii) any other reasonable information the department finds necessary to carry out the provisions and purpose of this part.~~

(b) *In determining the value of assets for the purposes of commodity dealer licensing:*

(i) *the value of the assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal; and*

(ii) *credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the insurable property is protected against loss or damage by fire by insurance in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.*

(4) ~~In~~ *Except as provided in subsection (5), in order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain net assets of at least \$50,000 or maintain a bond in the amount of \$2,000 for each \$1,000 or fraction thereof of net assets deficiency. However, a minimum of \$10,000 net assets is required by a commodity dealer to qualify for a license. Assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal. In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in*

this state. A bond submitted for purposes of this subsection is in addition to any bond otherwise required under this part.:

- (a) equity of \$50,000;
- (b) positive working capital; and
- (c) the bond required under 80-4-604.

(5) (a) An applicant for a commodity dealer's license:

(i) that meets the condition specified in subsection (4)(c) and has maintained positive equity but does not meet the condition specified in subsection (4)(a) shall provide the department with additional bonding in the amount of \$2,000 for each \$1,000 or fraction of \$1,000 that the applicant's equity is less than \$50,000; and

(ii) that meets the condition specified in subsection (4)(c) but does not meet the condition specified in subsection (4)(b) shall provide the department with additional bonding in the amount of \$2,000 for each \$1,000 or fraction of \$1,000 that the applicant's current liabilities exceed the applicant's current assets; or

(iii) that cannot or chooses not to meet the requirements of subsections (4)(a), (4)(b), and (4)(c) may, at the applicant's discretion and with the consent of the department, provide the department with a bond in the amount of 110% of the value of commodities the applicant or dealer intends to purchase during the term of the license or 110% of the value of commodities the dealer purchased during the preceding 12 months, whichever is greater. The minimum bond is \$20,000.

(b) An applicant or commodity dealer that provides a bond under subsection (5)(a)(iii) is exempt from the bonding requirement in 80-4-604(2).

(c) If a commodity dealer posts a bond or equivalent under subsection (5)(a)(iii) and at any time has unpaid contracts that exceed 90% of the dealer's bond or equivalent, the dealer shall either pay off contracts of sufficient value or increase the bond amount so that the total value of the unpaid contracts is less than 90% of the bond or equivalent.

~~(5)(6)~~ The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them."

Section 8. Section 80-4-604, MCA, is amended to read:

"80-4-604. Bonding requirement amounts — cancellation. (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its equivalent, as established by department rule, payable to the state.

(2) ~~The~~ Except as provided in 80-4-601(5)(b):

(a) ~~the~~ bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period. ~~The~~;

(b) ~~the~~ bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period. ~~The~~; and

(c) ~~the~~ minimum amount of bond required by any commodity dealer is \$20,000; and the maximum is prescribed in 80-4-405.

(3) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior to the cancellation of the bond. A commodity dealer's bond filed with the department is continuous until canceled by the

surety upon 60 days' notice; however, cancellation does not terminate any liability of the surety incurred prior to the date of cancellation."

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved April 14, 2011

CHAPTER NO. 176

[SB 76]

AN ACT PROVIDING FOR PAROLE ELIGIBILITY FOR PERSONS SENTENCED TO THE CUSTODY OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND CONFINED IN CERTAIN STATE FACILITIES; AND AMENDING SECTION 46-23-201, MCA.

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

Section 1. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through (5) *and when in the board's opinion there is reasonable probability that a prisoner can be released without detriment to the prisoner or to the community,* the board may release on nonmedical parole by appropriate order any person who is:

(a) confined in a state prison ~~or the state hospital or any person who is;~~

(b) sentenced to the state prison and confined in a prerelease center ~~when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community; or~~

(c) *sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.*

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be paroled.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."

Approved April 14, 2011

CHAPTER NO. 177

[SB 91]

AN ACT REVISING POSTAL SERVICE REQUIREMENTS FOR PROPOSED CITIES AND TOWNS; AMENDING SECTION 7-2-4101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-2-4101, MCA, is amended to read:

“7-2-4101. Petition to organize city or town. (1) Whenever the inhabitants of any part of a county desire to organize as a city or town, the inhabitants may apply by petition, signed by not less than 300 registered electors or two-thirds of the registered electors, whichever is less, who are residents of the state and residing within the limits of the proposed city or town, to the board of county commissioners of the county in which the proposed area is situated.

(2) (a) The petition must describe the limits of the proposed city or town and wards of the proposed city or town. A proposed ward must contain 50 or more registered electors and must have at least 200 inhabitants for each square mile of land area.

(b) The proposed city or town must contain a post office, *contract postal unit, or other similar unit operated by or under contract with the United States postal service* within the proposed area of the city or town.

(c) The petitioners shall attach to the petition a map of the proposed area to be incorporated and state the name of the proposed city or town.

(3) The petition and map must be filed in the office of the election administrator.”

Section 2. Contingent voidness. If [LC 1283] is not passed and approved, then [this act] is void.

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

Approved April 14, 2011

CHAPTER NO. 178

[SB 115]

AN ACT PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM DISCLOSING INFORMATION THAT IDENTIFIES ANY PERSON WHO HAS LAWFULLY TAKEN A LARGE PREDATOR DURING A HUNT WITHOUT THE WRITTEN CONSENT OF THE PERSON AFFECTED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 any person who has lawfully taken 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.

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

Section 3. Effective date. [This act] is effective on passage and approval.
Approved April 14, 2011

CHAPTER NO. 179

[SB 118]

AN ACT CLARIFYING THAT OUTFITTERS MAY CONTRACT FOR EQUIPMENT TO MEET LICENSING REQUIREMENTS; AMENDING SECTIONS 37-47-302 AND 37-47-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-47-302, MCA, is amended to read:

“37-47-302. Outfitter’s qualifications. An applicant for an outfitter’s license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule;

(2) own, ~~or~~ hold under written lease, *or contract for* or represent a company, corporation, or partnership who owns, ~~or~~ holds under written lease, *or contracts for* the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter’s clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent); and

(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem.”

Section 2. Section 37-47-304, MCA, is amended to read:

“37-47-304. Application. (1) Each applicant for an outfitter’s, guide’s, or professional guide’s license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter’s license forms the basis for the outfitter’s operations plan and must include:

(a) the applicant’s full name, residence, address, conservation license number, driver’s license number, birth date, physical description, and telephone number;

(b) the address of the applicant’s principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including:

(i) years of experience as an outfitter, guide, or professional guide;

(ii) the applicant’s knowledge of areas in which the applicant has operated and intends to operate; and

(iii) the applicant’s ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and

stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned, ~~or~~ leased, *or contracted for* by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant intends to provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

(3) An application for an outfitter's license must be in the name of an individual person only. An application involving corporations, proprietorships, or partnerships 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 corporation, proprietorship, or partnership 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. Effective date. [This act] is effective on passage and approval.

Approved April 14, 2011

CHAPTER NO. 180

[HB 187]

AN ACT REQUIRING THE TRANSPORTATION COMMISSION AND COUNTIES TO USE MONTANA-MADE WOODEN PRODUCTS IN CERTAIN ROAD AND BRIDGE CONSTRUCTION OR RECONSTRUCTION PROJECTS.

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

Section 1. Use of Montana-made wooden materials in county road projects. When the board of county commissioners authorizes a construction or reconstruction project on a county road, it shall require the use of Montana-made wooden guardrail posts, fenceposts, and signposts when appropriate and when the cost of wooden materials is less than or equal to the cost of other materials.

Section 2. Use of Montana-made wooden materials in wooden county bridge projects. When the board of county commissioners authorizes

a construction or reconstruction project for a wooden county bridge, it shall require the use of Montana-made wooden decking, guardrail posts, fenceposts, and signposts when appropriate and when the cost of wooden materials is less than or equal to the cost of other materials.

Section 3. Use of Montana-made wooden materials in highway and road projects. Unless prohibited by federal law, all contracts let by the commission for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns and all contracts entered into under 7-14-4108, must use Montana-made wooden guardrail posts, fenceposts, signposts, and decking when appropriate and when the cost of wooden materials is less than or equal to the cost of other materials.

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 14, part 21, and the provisions of Title 7, chapter 14, part 21, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 14, part 24, and the provisions of Title 7, chapter 14, part 24, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 3].

Approved April 15, 2011

CHAPTER NO. 181

[HB 195]

AN ACT REQUIRING THAT A DRIVER'S LICENSE CONTAIN THE LICENSEE'S RESIDENCE ADDRESS UNLESS THE LICENSEE REQUESTS USE OF THE MAILING ADDRESS; AND AMENDING SECTION 61-5-111, MCA.

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

Section 1. Section 61-5-111, MCA, is amended to read:

“61-5-111. Contents of driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, ~~Montana mailing address~~ *Montana residence address unless the licensee requests use of the mailing address*, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and road or skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) Except as provided in subsections (3)(d)(iv) through (3)(d)(vi), a person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail is 8 years.

(v) The department may not renew a license by mail if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; or

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572.

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(ii) motorcycle endorsement — 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate — \$10 a year or fraction of a year; or

(B) intrastate — \$8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents."

Approved April 15, 2011

CHAPTER NO. 182

[HB 330]

AN ACT REQUIRING VOTER REGISTRATION FORMS TO BE STANDARDIZED AND TO PROVIDE AN OPTION FOR REQUESTING TO BE PLACED ON THE ABSENTEE BALLOT LIST TO RECEIVE ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 13-2-110, 13-13-212, AND 13-21-210, MCA.

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

Section 1. Standard application form for voter registration and absentee ballot requests. (1) The secretary of state shall establish by rule a standard application form, to be used by each election administrator, that allows an individual to apply for voter registration and to request to be added to the absentee ballot list in order to receive ballots for subsequent elections.

(2) Pursuant to 13-13-212(4), the absentee ballot application portion of the standard form must include substantially the following language and options:

Optional: I request an absentee ballot to be mailed to me for as long as I reside at the address listed:

- for each subsequent election in which I am eligible to vote; or
- for each subsequent federal election in which I am eligible to vote.

I understand that in order to continue to receive an absentee ballot, I must complete, sign, and return a confirmation form that will be mailed to me in January of each year.

Section 2. Section 13-2-110, MCA, is amended to read:

"13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes.

(1) An individual may apply for voter registration in person or by mail by completing and signing ~~an~~ *the standard application form* for voter registration *provided for in [section 1]* and providing the application to the election administrator in the county in which the elector resides.

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed.

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number; or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) (a) If an applicant does not have a driver's license or social security number, the applicant shall provide as an alternative form of identification:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or

(ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's identity or eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law."

Section 3. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions.

(1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a ~~standardized~~ *standard application* form provided by rule by the secretary of state *pursuant to [section 1]* or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application. *The request may be made when the individual applies for voter registration using the standard application form provided for in [section 1].*

(b) The election administrator shall mail a forwardable address confirmation form in January of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election.”

Section 4. Section 13-21-210, MCA, is amended to read:

“13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector’s birth date and signature; ~~or~~

(ii) by properly completing, signing, and returning to the election administrator the federal post card application; *or*

(iii) *by submitting to the election administrator the standard application form provided for in [section 1] when registering to vote.*

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector will be removed from the ~~permanent~~ absentee ballot list. An elector who is removed from the ~~permanent~~ absentee ballot list will continue to receive absentee ballots during the period covered in the elector’s initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 1, part 2, and the provisions of Title 13, chapter 1, part 2, apply to [section 1].

Approved April 15, 2011

CHAPTER NO. 183

[HB 339]

AN ACT ELIMINATING THE LIMIT ON THE NUMBER OF CLASS B-13 NONRESIDENT YOUTH BIG GAME COMBINATION LICENSES THAT MAY BE SOLD; AMENDING SECTION 87-2-522, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-2-522, MCA, is amended to read:

"87-2-522. Class B-13—nonresident youth big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, and who is 12 years of age or older or will turn 12 years old before or during the season for which the license is issued and who is under 18 years of age may, upon payment of a fee of one-half the cost of a regularly priced Class B-10 nonresident big game combination license, plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office in Helena, Montana, to purchase a Class B-13 nonresident youth big game combination license.

(2) The holder of a Class B-13 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license. When using a Class B-13 license, the holder must be accompanied by an adult immediate family member who is the holder of a valid nonresident Class B-10 or Class B-11 combination license or who is the holder of a valid resident deer or elk tag. As used in this subsection, an adult immediate family member means an applicant's natural or adoptive parent, grandparent, brother, or sister who is 18 years of age or older.

(3) ~~Not more than 300 Class B-13 licenses are authorized for sale each license year.~~ Class B-13 licenses are not included in the limit on the number of available Class B-10 nonresident big game combination licenses issued pursuant to 87-2-505.

(4) The holder of a valid Class B-13 license may apply for a Class B-12 nonresident elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is \$270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission."

Section 2. Effective date. [This act] is effective March 1, 2012.

Approved April 15, 2011

CHAPTER NO. 184

[HB 479]

AN ACT GRANTING THE BOARD OF OIL AND GAS CONSERVATION RULEMAKING AUTHORITY TO REGULATE AS INJECTION WELLS INJECTIONS TO RESTORE OR ENHANCE THE MICROBIAL CONVERSION OF HYDROCARBON SUBSTRATES TO METHANE GAS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Rulemaking — microbial conversion wells. The board may adopt rules necessary to regulate well injections to restore or enhance the microbial conversion of hydrocarbon substrates to methane gas as class II injection wells.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 1].

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

Approved April 15, 2011

CHAPTER NO. 185

[HB 491]

AN ACT AUTHORIZING PUBLIC PROCUREMENT UNITS TO PURCHASE COOPERATIVELY FROM CERTAIN COOPERATIVE ENTITIES; AMENDING SECTION 18-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 18-4-402, MCA, is amended to read:

“18-4-402. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants independent of the requirements of part 3. Cooperative purchasing may include purchasing through federal supply schedules of the United States general services administration, joint or multiparty contracts between public procurement units, and open-ended state public procurement unit contracts that are made available to local public procurement units, and competitive contracts established by for-profit, not-for-profit, or nonprofit cooperative entities.”

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

Approved April 15, 2011

CHAPTER NO. 186

[HB 575]

AN ACT GENERALLY REVISING ANNEXATION LAWS; ALLOWING ANNEXATION OF CERTAIN PARCELS IF ALL OWNERS OF PROPERTY TO BE ANNEXED AGREE; PROVIDING FOR COORDINATION AND CONSULTATION WITH THE COUNTY OR COUNTIES IN WHICH THE

MUNICIPALITY RESIDES FOR PURPOSES OF TRANSFERRING SERVICES; PROVIDING A PROCESS FOR THE TRANSFER OF FIRE PROTECTION SERVICES FROM A RURAL FIRE DISTRICT; ELIMINATING THE RESTRICTION ON ANNEXATION OF LANDS WITHIN RURAL FIRE DISTRICTS THAT HAVE BEEN ESTABLISHED FOR MORE THAN 10 YEARS; PROVIDING THAT A COUNTY MAY PETITION A COURT TO REVIEW THE ANNEXATION PROCEDURES OF A MUNICIPALITY; AMENDING SECTIONS 7-2-4601, 7-2-4606, 7-2-4608, 7-2-4705, 7-2-4731, 7-2-4732, 7-2-4734, AND 7-2-4741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-2-4601, MCA, is amended to read:

“7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 1/3% of the registered electors of the area proposed to be annexed, shall without delay submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

(i) more than 50% of the resident electors owning real property in the area to be annexed; or

(ii) the owner or owners of ~~50% of the real property in the~~ *representing 50% or more of the total* area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) ~~upon~~ *on* its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.”

Section 2. Section 7-2-4606, MCA, is amended to read:

“7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days of the election, pass and adopt a resolution providing for the annexation.

(b) The resolution must state that a petition has been filed with the council or other legislative body with the signatures of 33 1/3% of the resident electors owning real property in the area proposed to be annexed; a description of the boundaries of the area to be annexed; a copy of the resolution ordering a general or special election; a copy of the notice of the election; the time and result of the canvass of the votes received in favor of annexation and the number of votes cast against annexation; and that the boundaries of the city or town will be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident electors owning real property or the owners of

real property representing 50% or more of the total area to be annexed; a description of the boundaries of the area to be annexed; and a statement that the boundaries of the municipality are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.”

Section 3. Section 7-2-4608, MCA, is amended to read:

“7-2-4608. Restrictions on annexation power. (1) ~~No territory which, Territory that is part of an incorporated city or town at the time such a petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall as provided in 7-2-4601 may not be annexed under the provisions of this part.~~

(2) ~~No Except as provided in subsection (3), a parcel of land which that, at the time such a petition for such proposed annexation is presented to such council or legislative the governing body of a city or town, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for any purpose incident thereto shall to those uses may not be annexed under the provisions of this part.~~

(3) *The provisions of subsection (2) do not apply if the petition submitted to the governing body of the city or town is signed by 100% of the owners of the land proposed to be annexed and the annexation is in accordance with the city’s or town’s adopted growth policy.”*

Section 4. Section 7-2-4705, MCA, is amended to read:

“7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of the municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the owners of real property situated outside the corporate boundaries of any municipality, but contiguous to the municipality, desire to have real estate annexed to the municipality, they shall file with the governing body of the municipality a petition bearing the signatures of 51% of the real property owners of the area sought to be annexed and requesting a resolution stating that the municipality intends to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2)(3).”

Section 5. Section 7-2-4731, MCA, is amended to read:

“7-2-4731. Plans and report on extension of services required — consultation with county. (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to ~~such the area proposed to be annexed. This~~ *The report shall must include:*

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of ~~such the streets and utility lines as required in subsection (1)(c); and~~

(iii) the general land use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) *Prior to making plans for the extension of services pursuant to subsection (1), the municipality shall provide notice of its decision to exercise its authority under this part to the county. If requested by the county, the municipality shall consult with the county governing body or its representatives to coordinate the orderly transfer of services.*

(2)(3) At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body *of the municipality* shall approve the report and ~~shall make it~~ *the report* available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.”

Section 6. Section 7-2-4732, MCA, is amended to read:

“7-2-4732. Contents of plan for extension of services. (1) ~~Specifically,~~ *The plans for the extension of services shall must* provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services; *and* develop and add sections to the city.

(2) The plans ~~shall~~ *must*:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as ~~such~~ *those* services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and ~~of~~ major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when ~~such~~ *the* streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure ~~such~~ *the* services, according to the policies in effect in ~~such~~ *the* municipality for extending ~~such~~ *the* services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of ~~such~~ *the* streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and ~~no~~ capital improvements are *not* needed to provide adequate services stipulated by this section and 7-2-4731, the municipality ~~must~~ *shall* provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

(5) *If a county, special district, or improvement district currently provides services to the area to be annexed, the plan must provide specific steps for the orderly transfer of those services, including police protection, fire protection,*

garbage collection, street and street maintenance services, and utility services. The plan for the transfer of services must be developed in consultation with the governing body of the county and with any other departments of the county, special districts, or improvement districts that have been providing services to the area proposed to be annexed.”

Section 7. Section 7-2-4734, MCA, is amended to read:

“7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area that meets the following standards:

(1) The area must be contiguous to the municipality’s boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) The area must be included within and the proposed annexation must conform to a growth policy adopted pursuant to Title 76, chapter 1.

~~(4) No part of the area may be included within the boundary, as existing at the inception of the attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127.~~

(4) (a) If fire protection services in the area to be annexed have been provided by a fire district organized under Title 7, chapter 33, part 21, the plan must include provisions for coordinating the transfer of fire protection services to the municipality and compensating the district, if necessary, for equipment and district expenses.

(b) Upon transfer of fire protection services, the existing boundaries of a rural fire district may be altered or the fire district may be dissolved as provided in 7-33-2401.”

Section 8. Section 7-2-4741, MCA, is amended to read:

“7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, *a petition seeking review of the annexation procedures of the governing body of the municipality may be filed in the district court in which the municipality is located by:*

(a) either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing body; and

(b) the county from which the land is being annexed.

(2) If two or more petitions for review are submitted to the court, the court may consolidate the petitions for review at a single hearing.”

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

Approved April 15, 2011

CHAPTER NO. 187

[SB 3]

AN ACT REQUIRING STATE AGENCIES AND THE MONTANA UNIVERSITY SYSTEM TO BIENNIALY REPORT TO THE PRESERVATION REVIEW BOARD ON THE STATUS AND MAINTENANCE NEEDS OF AGENCY HERITAGE PROPERTIES; REQUIRING THE STATE HISTORIC PRESERVATION OFFICER TO REPORT THE INFORMATION TO THE LEGISLATURE; AND AMENDING SECTIONS 22-3-422, 22-3-423, AND 22-3-424, MCA.

WHEREAS, hundreds of heritage properties have been entrusted to the state of Montana, and the state's agencies are responsible for maintaining those properties on behalf of the state's citizens; and

WHEREAS, these properties are in danger of disappearing or falling into a state of disrepair from which they may never recover; and

WHEREAS, preserving and maintaining heritage properties is important not only for fostering a sense of identity and community, but also for the economic benefits to be realized through reusing buildings, attracting tourism, and revitalizing downtown areas; and

WHEREAS, regular assessment by state agencies on the condition of the heritage properties under the agencies' care will help ensure the state's ongoing stewardship of these valuable resources.

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

Section 1. Section 22-3-422, MCA, is amended to read:

"22-3-422. Duties of preservation review board. The preservation review board shall:

- (1) recommend nominations to the register;
- (2) approve or disapprove all nominations to the register;
- (3) approve or disapprove additions to statewide inventories of heritage properties;
- (4) review the annual work program that recommends preservation goals and grant allocations for the next succeeding fiscal year; ~~and~~
- (5) act in an advisory capacity to the historic preservation office and to state agencies; *and*
- (6) *accept reports from state agencies and the Montana university system on the first Tuesday in February of every even-numbered year on the status and stewardship of the agencies' and the university system's heritage properties as required in 22-3-424 and make recommendations regarding management of the properties.*"

Section 2. Section 22-3-423, MCA, is amended to read:

"22-3-423. Duties of historic preservation officer. Subject to the supervision of the director of the historical society, the historic preservation officer has the following duties and responsibilities:

- (1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;
- (2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;
- (3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter the properties;

(10) respond to requests for consultation under section 106 of the National Historic Preservation Act, as provided for in 22-3-429;

(11) develop procedures and guidelines for the evaluation of heritage property or paleontological remains as provided in 22-3-428;

(12) protect from disclosure to the public any information relating to the location or character of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to the resources or to the area or place where the resources are located; ~~and~~

(13) report the information gathered pursuant to 22-3-422(6), along with any recommendations by the historic preservation officer or the review board, to an appropriate legislative interim committee established under Title 5, chapter 5, part 2. The report required in this subsection must also be incorporated into the biennial report required to be submitted to the governor and the legislature under 22-3-107(8).

~~(13)~~(14) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part.”

Section 3. Section 22-3-424, MCA, is amended to read:

“22-3-424. Duties of state agencies. State agencies, *including the Montana university system*, shall:

(1) in consultation with the historical society adopt rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423;

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state are given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains; *and*

(4) pursuant to 22-3-422(6), provide to the preservation review board on the first Tuesday in February of every even-numbered year the following information:

(a) a list of the heritage properties managed by the agencies as those properties have been identified pursuant to this section;

(b) the status and condition of each heritage property;

(c) the stewardship efforts in which the agencies have engaged to maintain each heritage property and the cost of those activities;

(d) a prioritized list of the maintenance needs for the properties; and

(e) a record of the agencies' compliance with subsections (1) and (2)."

Approved April 15, 2011

CHAPTER NO. 188

[SB 5]

AN ACT REPEALING THE TERMINATION DATE FOR THE TRANSFER OF CERTAIN FUNCTIONS FROM THE DEPARTMENT OF LIVESTOCK TO THE BOARD OF MILK CONTROL UNDER THE MILK CONTROL LAWS; REPEALING SECTION 20, CHAPTER 361, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 20, Chapter 361, Laws of 2009, is repealed.

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

Approved April 15, 2011

CHAPTER NO. 189

[SB 9]

AN ACT AUTHORIZING THE USE OF PETROLEUM MIXING ZONES IN THE REMEDIATION AND RESOLUTION OF PETROLEUM RELEASES; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-307, 75-11-309, 75-11-503, AND 75-11-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except *that* if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to [section 5(3)(a)]; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party; and

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for

consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500 for all other releases.

(5) If an insurer pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 2. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs — corrective action plans. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(e)(f) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request that the corrective action plan be amended pursuant to [section 5] to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in [section 5] are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.

~~(f)(g)~~ The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

~~(g)(h)~~ (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

~~(h)(i)~~ The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and

substantiating documents to the board in the form and manner required by the board.

~~(j)~~(j) In addition to the documentation in subsections ~~(1)(g) and~~ (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections ~~(1)(g) and~~ (1)(h) and (1)(i), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for

requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee.”

Section 3. Section 75-11-503, MCA, is amended to read:

“75-11-503. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) “Board” means the board of environmental review provided for in 2-15-3502.

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

(3) “Dispose” or “disposal” means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) “Person” means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) “*Petroleum mixing zone*” means an area where water quality standards for petroleum and petroleum constituents may be exceeded subject to the conditions of [section 5] and consistent with rules adopted under 75-11-318, 75-11-319, and 75-11-505.

(~~5~~)(6) “Regulated substance”:

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

~~(6)~~(7) "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.

~~(7)~~(8) "Underground storage tank" or "tank":

(a) means, except as provided in subsections ~~(7)(b)(i)~~ (8)(b)(i) through ~~(7)(b)(xi)~~ (8)(b)(xi):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground;

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground; and

(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection ~~(7)(b)(v)(A)~~ (8)(b)(v)(A) or ~~(7)(b)(v)(B)~~ (8)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(xi) any pipe connected to a tank described in subsections ~~(7)(b)(i)~~ (8)(b)(i) through ~~(7)(b)(ix)~~ (8)(b)(ix); or

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to facilitywide corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."

Section 4. Section 75-11-505, MCA, is amended to read:

“75-11-505. Administrative rules — *underground storage tanks — petroleum mixing zones.* (1) The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

- (1)(a) reporting by owners and operators;
- (2)(b) financial responsibility;
- (3)(c) release detection, prevention, and corrective action;
- (4)(d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;
- (5)(e) standards for design, construction, installation, and closure;
- (6)(f) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.
- (7)(g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and
- (8)(h) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(2) *In accordance with [section 5], the department:*

(a) *shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a corrective action plan; and*

(b) *may incorporate by reference rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water.”*

Section 5. Corrective action — petroleum mixing zones. (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

- (a) all source material has been removed to the maximum extent practicable;
- (b) the extent of petroleum contamination has been defined;
- (c) natural breakdown or attenuation is occurring within the plume; and
- (d) no further corrective action is reasonably required at the site.

(3) The boundary of a petroleum mixing zone established in accordance with this section must be contained within the:

(a) boundary of the property on which the petroleum release originated unless a recorded easement on an adjoining property allows the petroleum mixing zone to extend onto the adjoining property; and

(b) unconfined aquifer.

(4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding site-specific, impact-related reason to require monitoring.

(5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent, including benzene, may not exceed a water quality standard adopted by the board pursuant to 75-5-301.

(6) If a petroleum mixing zone is established and maintained:

(a) the petroleum release is considered to be resolved;

(b) no further corrective action for the petroleum release is required; and

(c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum mixing zone has been established for the release and describing any conditions required to maintain the petroleum mixing zone.

(7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior to [the effective date of this act].

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [section 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 190

[SB 55]

AN ACT IMPLEMENTING THE FEDERAL MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT; AMENDING SECTIONS 13-13-205, 13-21-201, AND 13-21-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-13-205, MCA, is amended to read:

“13-13-205. When ballots to be available. (1) Except as provided in subsection (2), the election administrator shall ensure that ballots are available for voting at least:

(a) 30 days prior to an election for those elections held in compliance with 13-1-107(1);

(b) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and

(c) 30 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

(2) A ballot requested pursuant to Title 13, chapter 21, must be sent to the elector as soon as the ballot is printed or at least 45 days in advance of an election held in conjunction with a federal *primary election, federal general election, or federal special election in compliance with 13-1-104(1).*”

Section 2. Section 13-21-201, MCA, is amended to read:

“13-21-201. Registration of United States electors — simultaneous application for absentee ballot. (1) A United States elector may register with the election administrator in the elector’s county of residence by properly completing, signing, and returning:

(a) the voter registration form;

(b) the federal post card application; or

(c) the federal write-in absentee ballot as provided in 13-21-205.

(2) A registration application under subsection (1)(a) or (1)(b) must be received by the election administrator by the time specified in 13-2-304 for late registration.

(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under 13-21-210 *and, if transmitted electronically and if required identification is included, is not required to be signed.*"

Section 3. Section 13-21-210, MCA, is amended to read:

"13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; ~~or~~

(ii) by properly completing, signing, and returning to the election administrator the federal post card application; *or*

(iii) *by making an electronic request that includes the elector's birth date and affirmation of the voter's eligibility to vote under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, et seq.*

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all *federal*, state, and local elections in the calendar year in which the application is made ~~and the next two regularly scheduled federal general elections~~ unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector will be removed from the ~~permanent~~ absentee ballot list. An elector who is removed from the ~~permanent~~ absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed, *but not later than 45 days before either a federal primary election, federal general election, or federal special election.*"

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

Approved April 15, 2011

CHAPTER NO. 191

[SB 160]

AN ACT AUTHORIZING THE USE OF OFF-HIGHWAY VEHICLES ON DESIGNATED ROADS AND DESIGNATED TRAILS WITHIN STATE PARKS AND FISHING ACCESS SITES; AND AMENDING SECTION 23-1-128, MCA.

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

Section 1. Section 23-1-128, MCA, is amended to read:

~~“23-1-128. Protection of riparian vegetation—limit on motorized Limits on camping, in riparian areas and operation of off-highway vehicles.~~ (1) In order to protect riparian vegetation, provide for stable streambanks, reduce erosion, and provide for nutrient barriers to protect the quality of rivers and streams,:

(1) camping in a motor vehicle, as defined in 61-1-101, is discouraged within 25 feet of a river or stream in state parks and fishing access sites; ~~and.~~

(2) ~~the off-road~~ The operation of an off-highway vehicle, as defined in 23-2-801, within state parks and fishing access sites is prohibited except for administrative purposes:

(a) for administrative purposes; or

(b) as designated by the department on roads, trails, or specific areas.”

Approved April 15, 2011

CHAPTER NO. 192

[SB 194]

AN ACT IMPLEMENTING A UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT; REVISING PROVISIONS FOR THE NOMINATION AND MEETING OF PRESIDENTIAL ELECTORS; REQUIRING EACH NOMINEE FOR PRESIDENTIAL ELECTOR TO EXECUTE A PLEDGE TO VOTE FOR THE PRESIDENTIAL CANDIDATE OF THE PARTY THAT NOMINATED THE ELECTOR; REQUIRING CERTIFICATION OF THE ELECTORS BY THE GOVERNOR; REVISING PROVISIONS TO FILL A VACANT ELECTOR POSITION; REQUIRING THE SECRETARY OF STATE TO CERTIFY THE FINAL VOTE; AND REPEALING SECTIONS 13-25-104, 13-25-105, AND 13-25-107, MCA.

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

Section 1. Short title. [Sections 1 through 8] may be cited as the “Uniform Faithful Presidential Electors Act”.

Section 2. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) “Cast” means accepted by the secretary of state in accordance with [section 7(3)].

(2) “Elector” means an individual selected as presidential elector under this part.

(3) “President” means the president of the United States.

(4) “Unaffiliated presidential candidate” means a candidate for president of the United States who qualifies for the general election ballot in this state under 13-10-504.

(5) “Vice president” means vice president of the United States.

Section 3. Designation of electors. Pursuant to 13-25-101, each political party qualified under 13-10-601 or unaffiliated presidential candidate shall submit to the secretary of state the names of two qualified individuals for each elector position in this state. One of the individuals must be designated as the elector nominee and the other must be designated as the alternate elector nominee. Unless otherwise provided by [sections 5 through 8], Montana's electors are the winning electors under the laws of this state.

Section 4. Pledge. Each elector nominated by a political party under 13-25-101 or by an unaffiliated presidential candidate shall execute the following pledge: "If selected for the position of elector, I agree to serve and to mark my ballots for president and vice president for the nominees of the political party that nominated me." The executed pledges must accompany the submission of the corresponding names to the secretary of state under 13-25-101(1).

Section 5. Certification of electors. When submitting the certificate of ascertainment as required by 3 U.S.C. 6, the governor shall certify the state's electors to the archivist of the United States. The certificate must state that:

(1) the electors will serve as electors unless a vacancy occurs in the office of elector before the end of the meeting required under [section 7(1)], in which case a substitute elector will fill the vacancy as provided for in [section 6]; and

(2) if a substitute elector is appointed to fill a vacancy, the governor will submit an amended certificate of ascertainment stating the names on the final list of the state's electors.

Section 6. Presiding officer — elector vacancy. (1) The secretary of state shall preside at the meeting of the electors described in [section 7(1)].

(2) The position of an elector not present to vote is considered vacant, and the secretary of state shall appoint an individual as a substitute elector as follows:

(a) if the alternate elector is present to vote, by appointing the alternate elector for the vacant position;

(b) if the alternate elector is not present to vote, by appointing an elector chosen by lot from among the alternate electors present to vote who are nominated by the same political party or unaffiliated presidential candidate;

(c) if the number of alternate electors present to vote is insufficient to fill a vacant position pursuant to subsection (2)(a) or (2)(b), by appointing any immediately available individual who is qualified to serve as an elector and chosen through nomination by and plurality vote of the remaining electors, including nomination and vote by a single elector if only one remains;

(d) if there is a tie between two nominees for substitute elector in a vote conducted under subsection (2)(c), by appointing an elector chosen by lot from among those nominees; or

(e) if all elector positions are vacant and cannot be filled pursuant to subsections (2)(a) through (2)(d), by appointing a single presidential elector, with remaining vacant positions to be filled pursuant to subsection (2)(c) and, if necessary, subsection (2)(d).

(3) To qualify as a substitute elector under subsection (2), an individual who has not executed the pledge required by [section 4] shall execute the following pledge: "I agree to serve and to mark my ballots for president and vice president consistent with the pledge of the individual to whose elector position I have succeeded."

Section 7. Elector voting. (1) The electors shall meet in Helena at 2 p.m. on the first Monday after the second Wednesday in December following their election.

(2) After all vacant positions have been filled pursuant to [section 6], the secretary of state shall provide each elector with a presidential and a vice presidential ballot. The elector shall mark the elector's presidential and vice presidential ballots with the elector's vote for the office of president and vice president, respectively, along with the elector's signature and the elector's legibly printed name.

(3) Unless otherwise provided by law, each elector shall present both completed ballots to the secretary of state, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under [section 4 or 6(3)]. Except as otherwise provided by law, the secretary of state may not accept and may not count either an elector's presidential or vice presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector's pledge.

(4) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot in violation of the elector's pledge executed under [section 4 or 6(3)] vacates the office of elector, creating a vacant position to be filled under [section 6].

(5) The secretary of state shall distribute ballots to and collect ballots from a substitute elector and repeat the process specified in this section until all of the electoral votes have been cast and recorded.

Section 8. Amended certificate of ascertainment — certificate of final vote. (1) After the vote of the electors is completed, if the final list of electors differs from the list the governor previously included on a certificate of ascertainment prepared and transmitted pursuant to [section 5], the secretary of state shall immediately prepare an amended certificate of ascertainment and transmit it to the governor for the governor's signature.

(2) The governor shall immediately sign and transmit to the secretary of state the signed amended certificate of ascertainment and a signed duplicate original of the amended certificate of ascertainment that indicates that the amended certificate of ascertainment must be substituted for the certificate of ascertainment previously submitted.

(3) The secretary of state shall prepare a certificate of vote. The electors on the final list shall sign the certificate. The secretary of state shall process and transmit the signed certificate with the amended certificate of ascertainment as provided under 3 U.S.C. 9 through 11.

Section 9. Uniformity of application and construction. In applying and construing [sections 1 through 9], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Section 10. Repealer. The following sections of the Montana Code Annotated are repealed:

- 13-25-104. Meeting and voting of electors.
- 13-25-105. Lists of persons voted for.
- 13-25-107. Vacancy in office of elector.

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 13, chapter 25, part 1, and the provisions of Title 13, chapter 25, part 1, apply to [sections 1 through 8].

Approved April 15, 2011

CHAPTER NO. 193

[SB 208]

AN ACT ALLOWING SATURDAY SCHOOL IN K-12 SCHOOLS; REQUIRING THAT SATURDAY SCHOOL BE VOLUNTARY; REQUIRING THAT SATURDAY SCHOOL IS NOT A PUPIL-INSTRUCTION DAY AND DOES NOT COUNT TOWARD THE MINIMUM AGGREGATE HOURS OF PUPIL INSTRUCTION; AND AMENDING SECTION 20-1-303, MCA.

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

Section 1. Section 20-1-303, MCA, is amended to read:

“20-1-303. Conduct of school on Saturday or Sunday prohibited — ~~exception exceptions.~~ exceptions. (1) Except as provided in ~~this section~~ subsections (2) and (3), pupil instruction may not be conducted on Saturday or Sunday.

(2) In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the trustees of the school district in accordance with the policies adopted by the board of public education.

(3) *Pupil instruction may be held on a Saturday at the discretion of a school district for the purpose of providing additional pupil instruction, provided that:*

(a) Saturday school is not a pupil-instruction day and does not count toward minimum aggregate hours of pupil instruction provided for in 20-1-301; and

(b) student attendance is voluntary.”

Approved April 15, 2011

CHAPTER NO. 194

[SB 210]

AN ACT MAKING IT A CRIMINAL OFFENSE FOR A PERSON TO OBTAIN OR ATTEMPT TO OBTAIN A DANGEROUS DRUG BY MAKING CERTAIN COMMUNICATIONS WITH A PERSON AUTHORIZED TO WRITE PRESCRIPTIONS FOR OR DISPENSE DANGEROUS DRUGS; AND AMENDING SECTIONS 26-1-805 AND 45-9-104, MCA.

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

Section 1. Section 26-1-805, MCA, is amended to read:

“26-1-805. Doctor-patient privilege. Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist may not, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient that was necessary to enable the physician, surgeon, or dentist to prescribe or act for the patient. *A communication described in 45-9-104(7) is not a privileged communication.”*

Section 2. Section 45-9-104, MCA, is amended to read:

“45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if the person obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

- (1) fraud, deceit, misrepresentation, or subterfuge;
- (2) falsely assuming the title of or representing that the person is a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;
- (3) the use of a forged, altered, or fictitious prescription;
- (4) the use of a false name or a false address on a prescription; or
- (5) the concealment of a material fact;
- (6) *knowingly or purposefully failing to disclose to a practitioner, as defined in 50-32-101, that the person has received the same or a similar dangerous drug or prescription for a dangerous drug from another source within the prior 30 days; or*
- (7) *knowingly or purposefully communicating false or incomplete information to a practitioner with the intent to procure the administration of or a prescription for a dangerous drug. A communication of this information for the purpose provided in this subsection is not a privileged communication."*

Approved April 15, 2011

CHAPTER NO. 195

[SB 223]

AN ACT REVISING THE PENSION BENEFIT PROVIDED BY THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 19-17-404, MCA, is amended to read:

"19-17-404. Amount of pension and disability benefits. (1) Each eligible member must receive a pension or disability benefit as provided in this section.

(2) (a) Except as provided in subsection (2)(c), the full pension benefit paid to eligible members is \$150 a month.

(b) A partial pension benefit is calculated by multiplying the full pension benefit in subsection (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) ~~The~~ *Except as provided in subsection (5), the* full pension benefit of a member who continued to be an active member after completing 20 years of service must be increased by \$7.50 a month for each additional year of active service the member completed after 20 years of service, up to 30 total years of service.

(3) The disability benefit paid to an eligible member is calculated in the same manner as partial pension benefits described in subsection (2)(b), except that the numerator may not be less than 10.

(4) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner.

(5) (a) *Subject to subsection (5)(b), the pension benefit of a member who continues to be a member after completing 30 years of credited service must be increased by \$7.50 per month for each additional year of credited service after 30*

years if the pension trust fund is actuarially sound and the amortization period for any unfunded liabilities remains 20 years or less.

(b) A member does not have a contract right to any additional pension benefits received pursuant to subsection (5)(a), and the member's monthly benefit must be reduced to the amount provided under subsection (2)(c) if the amortization period for the unfunded liabilities is greater than 20 years.

(c) This subsection (5) applies only to members who retire after [the effective date of this act]."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 15, 2011

CHAPTER NO. 196

[SB 236]

AN ACT REVISING THE SOLID WASTE MANAGEMENT LAWS RELATED TO POWERS AND DUTIES OF LOCAL GOVERNMENTS; CLARIFYING A LOCAL GOVERNMENT'S AUTHORITY TO CONTROL THE DISPOSITION OF SOLID WASTE GENERATED WITHIN THE JURISDICTION OF THE LOCAL GOVERNMENT; AMENDING SECTION 75-10-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-10-112, MCA, is amended to read:

"75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste management and resource recovery plan and propose modifications to the state's solid waste management and resource recovery plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) subject to 15-10-420, finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of a local government, *except that, in the absence of an imminent threat to public health, safety, or the environment, a local government may not adopt a flow control or similar ordinance to require use of a specific transfer station or landfill for disposal of solid waste;*

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites.”

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

Approved April 15, 2011

CHAPTER NO. 197

[SB 248]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO APPOINT A COUNTY TAX APPEAL BOARD WITH THE NUMBER OF MEMBERS OVER THREE TO BE DETERMINED BY THE COUNTY; PROVIDING THAT IN COUNTIES WITH BOARDS OF MORE THAN THREE MEMBERS, ONLY THREE OF THE MEMBERS HEAR EACH APPEAL; AND AMENDING SECTION 15-15-101, MCA.

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

Section 1. Section 15-15-101, MCA, is amended to read:

“15-15-101. County tax appeal board — meetings and compensation.

(1) The board of county commissioners of each county shall appoint a ~~three-member~~ county tax appeal board, with *a minimum of three members and with* the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county in which they serve. The members receive compensation of \$45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board meets to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. *At the organizational meeting the members shall choose one member as the presiding officer of the board.* ~~‡~~ *The county tax appeal board shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear protests concerning assessments made by the department until the business of hearing protests is disposed of and, as provided in 15-2-201, may meet after December 31.*

(3) *In counties that have appointed more than three members to the county tax appeal board, only three members shall hear each appeal. The presiding officer shall select the three members hearing each appeal.*

~~(3)~~(4) In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. Upon notification by the county tax appeal board, the county clerk and recorder shall publish a notice to taxpayers, giving the time the county tax appeal board will be in session to hear scheduled protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published by May 15 of the current tax year.

~~(4)~~(5) Challenges to a department rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406.”

Approved April 15, 2011

CHAPTER NO. 198

[SB 275]

AN ACT REVISING LAWS RELATING TO PUBLIC CEMETERIES; AUTHORIZING CEMETERY GROUNDS TO BE USED FOR ANOTHER PUBLIC PURPOSE WHEN CEMETERY GROUNDS ARE UNSUITABLE FOR THE INTERMENT OF BODIES; AND AMENDING SECTION 7-35-4102, MCA.

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

Section 1. Section 7-35-4102, MCA, is amended to read:

“7-35-4102. Vesting of title to cemetery grounds — restrictions on use. The title to lands used as a public cemetery or graveyard, situated in or near to any city, or town, or village and used by the inhabitants thereof of the city or town as a ~~burial-ground~~ *burial ground* continuously without interruption for 5 years, is vested in the inhabitants of ~~such the city, or town, or village.~~ The lands must not be used for any other purpose than as a public cemetery, except: that

(1) the bodies interred ~~therein in the cemetery grounds~~ may be removed and no ~~other additional bodies may be interred therein in the cemetery grounds~~ upon the order of the board of county commissioners, city council, or other body having authority when it appears that the public health is endangered or for any other good cause, ~~but a.~~ A new cemetery must be purchased and laid out by proper authority and ~~such the bodies removed and from the old cemetery must be interred therein in the new cemetery,~~ and ~~the~~ The old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

(2) *when a portion of the cemetery grounds are determined to be unsuitable for the interment of bodies, the unsuitable grounds may be used for another public purpose upon the order of the board of county commissioners, city council, or other body having authority.”*

Approved April 15, 2011

CHAPTER NO. 199

[SB 280]

AN ACT AUTHORIZING THE COMMISSIONER OF HIGHER EDUCATION TO DEVELOP A SELF-INSURED STUDENT HEALTH PLAN FOR ENROLLED STUDENTS OF THE MONTANA UNIVERSITY SYSTEM AND THEIR DEPENDENTS, INCLUDING STUDENTS OF A COMMUNITY COLLEGE DISTRICT; AUTHORIZING CERTAIN METHODS BY WHICH THE COMMISSIONER MAY FINANCE THE COSTS TO ESTABLISH THE PLAN; AND AMENDING SECTION 33-1-102, MCA.

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

Section 1. Purpose. The purpose of this part is to establish the structure by which the Montana university system may develop a self-insured student health plan, to work in conjunction with available campus student health services for enrolled students of the Montana university system and their dependents, including students of a community college district, and to clarify that the plan is not regulated by or subject to the provisions of Title 33.

Section 2. Authorization to establish self-insured health plan for students — requirements — exemption. (1) The commissioner may establish a self-insured student health plan for enrolled students of the system and their dependents, including students of a community college district. In developing a self-insured student health plan, the commissioner shall:

- (a) maintain the plan on an actuarially sound basis;
- (b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the plan; and
- (c) deposit all reserve funds, contributions and payments, interest earnings, and premiums paid to the plan. The deposits must be expended for claims under the plan and for the costs of administering the plan, including but not limited to

the costs of hiring staff, consultants, actuaries, and auditors, purchasing necessary reinsurance, and repaying debts.

(2) Prior to the implementation of a self-insured student health plan, the commissioner shall consult with affected parties, including but not limited to the board of regents and representatives of enrolled students of the system.

(3) A self-insured student health plan developed under this part is not responsible for and may not cover any services or pay any expenses for which payment has been made or is due under an automobile, premises, or other private or public medical payment coverage plan or provision or under a workers' compensation plan or program, except when the other payor is required by federal law to be a payor of last resort. The term "services" includes but is not limited to all medical services, procedures, supplies, medications, or other items or services provided to treat an injury or medical condition sustained by a member of the plan.

(4) The provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part.

Section 3. Authorization to finance self-insured health plan for students. The commissioner may, subject to the approval of the board of regents, finance the initial costs to establish the plan established pursuant to [section 1] by using any of the following methods:

(1) authorizing a long-term loan of university funds. The loan must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(2) issuing and selling bonds and notes in whole or in part for this purpose; or

(3) using any other lawful means, including the assessment of student fees.

Section 4. 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 or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) Except as otherwise provided in Title 33, chapter 22, this code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, 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 [sections 1 through 3].*

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 through 3].

Approved April 15, 2011

CHAPTER NO. 200

[SB 287]

AN ACT REQUIRING THAT CERTAIN CORPORATE OFFICERS AND MANAGERS OF MANAGER-MANAGED LIMITED LIABILITY COMPANIES WORKING IN THE CONSTRUCTION INDUSTRY BE COVERED BY WORKERS' COMPENSATION OR OBTAIN AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; AMENDING SECTIONS 39-71-401 AND 39-71-417, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-71-401, MCA, is amended to read:

“39-71-401. Employments covered and exemptions — elections — notice. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following:

- (a) household or domestic employment;
- (b) casual employment;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
- (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):
 - (i) “freelance correspondent” means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) “newspaper carrier”:

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee’s main duties, carries or delivers papers.

(l) cosmetologist’s services and barber’s services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers’ Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer’s spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a “petroleum land professional” is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or, *except as provided in subsection (3)*, a manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer’s or manager’s shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of

a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 2. Section 39-71-417, MCA, is amended to read:

"39-71-417. Independent contractor certification. (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership; or

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) (a) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(i) the applicant's name and address;

(ii) the applicant's social security number;

(iii) each occupation for which the applicant is seeking independent contractor certification; and

(iv) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.

(c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:

(i) the applicant certifies under oath that the previously submitted documents are still valid and current; and

(ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation

Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2)."

Section 3. Effective date. [This act] is effective July 1, 2011.

Approved April 15, 2011

CHAPTER NO. 201

[SB 290]

AN ACT EXCLUDING AN INDEPENDENT CONTRACTOR FROM THE DEFINITION OF EMPLOYEE UNDER HUMAN RIGHTS LAWS; AMENDING SECTIONS 49-2-101 AND 49-3-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 49-2-101, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) "National origin" means ancestry.

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

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

(18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

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

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

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

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

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

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

Section 2. Section 49-3-201, MCA, is amended to read:

"49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to ~~assure~~ *ensure* compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(6) *For the purposes of this section, employment does not refer to or include services provided by an individual working under an independent contractor exemption certificate issued under 39-71-417."*

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

Approved April 15, 2011

CHAPTER NO. 202

[SB 355]

AN ACT ESTABLISHING THE MONTANA UNIVERSITY SYSTEM ASSISTANCE PROGRAM TO BE FUNDED FROM PRIVATE DONATIONS; ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE BOARD OF REGENTS TO ADMINISTER THE PROGRAM; CREATING A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 20-25-426, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Montana university system assistance program — purpose — duties of board of regents. (1) There is a Montana university system assistance program administered by the board of regents through the office of the commissioner of higher education. The program must allow a private donor to make tax deductible contributions by cash, check, or money order that benefit a qualifying institution and students of these public institutions.

(2) As part of the program, the board of regents shall:

(a) provide a donor with a receipt that reflects the contribution in sufficient detail for the donor to claim any applicable credits or deductions for state and federal income tax purposes;

(b) deposit donations to the program in the state special revenue account established by [section 2];

(c) develop procedures and forms that enable a donor to make contributions by cash, check, or money order for the benefit of a specific qualifying institution. If a donor does not select an institution, the donation must be allocated on an equal basis to all qualifying institutions by dividing the total donation by the number of qualifying institutions.

(d) develop procedures and forms that enable a donor to select the percentage of the donation that will be used by a qualifying institution for building projects, educational programs, and academic scholarships. If a donor does not make a selection, the donation may be used for the general support, maintenance, or improvement of the institution as provided in 17-3-1001(2).

(e) maintain adequate records to account for contributions that are allocated to each specific qualifying institution and any donor selection preference;

(f) provide each qualifying institution with a schedule showing the total donations credited to the institution at the end of each fiscal year; and

(g) distribute donor contributions to the qualifying institution's endowment fund as provided in [section 2].

(3) For the purposes of this section and [section 2], "qualifying institution" means:

(a) a Montana community college that is part of a community college district, defined and organized as provided in 20-15-101; and

(b) a unit of the Montana university system, as described in 20-25-201, or any of its affiliated campuses.

Section 2. Voluntary contribution account for Montana's universities, colleges of technology, and community colleges. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the Montana university system assistance account. The board of

regents shall deposit donations to the Montana university system assistance program in the account as provided in [section 1].

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying institutions.

(3) Earnings in the account are allocable to each qualifying institution in proportion to each qualifying institution's share of the account balance.

(4) The board of regents shall distribute donor contributions to the qualifying institution's endowment fund. A distribution may not exceed the institution's allocation and must be used for the purpose established by the donor as provided in [section 1(2)(d)]. The distributions are derived from a private nonstate source and are payable without an appropriation pursuant to 17-8-101.

Section 3. Section 20-25-426, MCA, is amended to read:

"20-25-426. Donations, grants, gifts. All donations, grants, gifts, or devises shall *must* be made to each unit in its legal name *or to the Montana university system assistance program established by [section 1]*. If made to any officer or board of the unit, ~~they shall~~ *the donations, grants, gifts, or devises must* be immediately transferred to the unit."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective July 1, 2011.

Section 6. Applicability. [This act] applies to the 2011 academic year and subsequent academic years.

Approved April 15, 2011

CHAPTER NO. 203

[SB 268]

AN ACT REQUIRING THAT SUPREME COURT JUSTICES BE ELECTED AND APPOINTED FROM SUPREME COURT DISTRICTS; ESTABLISHING SUPREME COURT DISTRICTS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT A SPECIAL ELECTION TO BE HELD CONCURRENTLY WITH THE 2012 PRIMARY ELECTION; AMENDING SECTIONS 3-2-101 AND 3-2-102, 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 3-2-101, MCA, is amended to read:

"3-2-101. Number, election, and term of office — selection of chief justice. (1) The supreme court consists of a chief justice and six associate justices who are elected by the qualified electors of the state at large *must be qualified electors of the district from which they are elected, with each member elected from a separate district of the state as provided in [section 3]. Each justice must be elected* at the general state elections election next preceding the expiration of the terms term of office of their predecessors, respectively, *the justice's predecessor and hold their offices holds office* for the term of 8 years from and after the first Monday of January next succeeding their the justice's election.

(2) After the general election in 2016, the chief justice must be selected by the majority vote of the seven justices at the first meeting of the court in each year after a general election.”

Section 2. Section 3-2-102, MCA, is amended to read:

“3-2-102. Qualifications and residence. (1) A person is not eligible for the office of justice of the supreme court unless the person is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office. *Once elected from a district, a justice is not required to reside within the district during the justice’s service in office.*

(3) A supreme court justice must, at the time of initial election, be a qualified elector of the supreme court district from which the justice is elected. A supreme court justice appointed to fill a vacancy must, at the time of appointment, be a qualified elector of the same initial supreme court district as the justice being replaced, and in an election following an appointment, the elected justice must be a qualified elector of the initial district.”

Section 3. Supreme court districts defined — number of judges. (1)

In this state there are seven supreme court judicial districts, distributed as follows:

(a) 1st district: Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Liberty, Meagher, Pondera, Teton, and Wheatland Counties;

(b) 2nd district: Big Horn, Blaine, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, and Wibaux Counties;

(c) 3rd district: Yellowstone County;

(d) 4th district: Lewis and Clark, Deer Lodge, Granite, Jefferson, Ravalli, Powell, and Broadwater Counties;

(e) 5th district: Flathead, Lincoln, Glacier, Sanders, and Toole Counties;

(f) 6th district: Gallatin, Madison, Beaverhead, and Silver Bow Counties;

(g) 7th district: Missoula, Lake, and Mineral Counties.

(2) There must be one supreme court justice selected from each district.

(3) The legislature shall review the districts after each decennial census for purposes of maintaining districts with approximately equal populations while following county lines.

Section 4. Transition. (1) [This act] may not remove any justice that is holding office on [the effective date of this act] during the term for which the justice was elected or appointed. After [the effective date of this act], each sitting associate justice must be assigned to the judicial district that corresponds to the associate justice’s current seat number and the chief justice must be assigned to the seventh district.

(2) (a) Except as provided in subsection (2)(b), each supreme court justice who chooses to seek reelection at the end of the justice’s current term shall run for reelection in the district to which the justice is assigned under subsection (1).

(b) A sitting justice that chooses to seek election in a district other than the district assigned under subsection (1) may run for election in the district if the justice resigns the justice’s current seat effective as of the date the justice files for election in the district to which the justice seeks election.

(3) In the 2012 election, the two candidates receiving the most votes in the primary for each seat up for reelection advance to the 2012 general election for the district that corresponds to the same seat number.

Section 5. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 3, chapter 2, and the provisions of Title 3, chapter 2, apply to [section 3].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective upon approval by the electorate.

Section 8. Applicability. [This act] applies to the election and appointment of supreme court justices to terms that begin on or after [the effective date of this act].

Section 9. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at a special election to be held concurrently with the primary election held in the spring of 2012 by printing on the ballot the full title of [this act] and the following:

- FOR requiring supreme court justices to be elected or appointed from districts with approximately equal populations.
- AGAINST requiring supreme court justices to be elected or appointed from districts with approximately equal populations.

CHAPTER NO. 204

[HB 61]

AN ACT ALLOWING A LOCAL AUTHORITY TO SET REDUCED SPEED LIMITS ON CERTAIN UNPAVED ROADS; AND AMENDING SECTION 61-8-310, MCA.

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

Section 1. Section 61-8-310, MCA, is amended to read:

“61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

- (a) decreases the limit at an intersection;
- (b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;
- (c) decreases the limit outside an urban district, but not to less than 35 miles an hour on a paved road or less than 25 miles an hour on an unpaved road; ~~or~~ or
- ~~(d)~~(d) decreases the limit in a school zone or in an area near a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may

adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.

(7) A local authority shall consult with district officials for a school when:

(a) establishing or altering the area of a school zone near the school; or

(b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school.

(8) *A speed limit set on an unpaved road under subsection (1)(c) must be the same for all types of motor vehicles that may be operated on the road.*

Approved April 18, 2011

CHAPTER NO. 205

[HB 95]

AN ACT GENERALLY REVISING HUMAN RIGHTS LAW; CLARIFYING THE SUBPOENA POWER OF THE DEPARTMENT OF LABOR AND INDUSTRY AND THE COMMISSIONER OF LABOR AND INDUSTRY; AUTHORIZING AN INDIAN EMPLOYMENT PREFERENCE ON OR NEAR RESERVATIONS; DELETING THE UNDEFINED TERM "ADAPTIVE DESIGN" WITH RESPECT TO HOUSING DISCRIMINATION; EXTENDING DEADLINES FOR ADMINISTRATIVE ACTION IF THE PARTIES AGREE TO MEDIATION; AMENDING SECTIONS 49-2-203, 49-2-303, 49-2-305, 49-2-403, AND 49-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 49-2-203, MCA, is amended to read:

“49-2-203. Subpoena power of department and commissioner. (1) The ~~commission~~ department may subpoena witnesses issue subpoenas, take the testimony of any person under oath, administer oaths, and, ~~in connection therewith,~~ require for the purpose of examination the production for examination of books, papers, or other tangible evidence relating to a matter in question before the commission complaint of discrimination filed under this chapter.

(2) The department’s staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner’s authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production, ~~for examination,~~ of books, papers, or other ~~intangible~~ tangible evidence for examination relating to the matter under investigation.

~~(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2).~~

~~(4)~~(3) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.”

Section 2. Section 49-2-303, MCA, is amended to read:

“49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference, as provided for in 2-18-111 and 18-1-110, may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section:

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents; or

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse.

(6) *The provisions of this chapter do not apply to a business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise required by a contract or other agreement under which preferential treatment may be given to an individual based on the individual's status as an Indian living on or near a reservation.*"

Section 3. Section 49-2-305, MCA, is amended to read:

"49-2-305. Discrimination in housing — exemptions. (1) It is an unlawful discriminatory practice for the owner, lessee, lessor, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement

that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the lessor's lessee's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term “covered multifamily housing accommodation” means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term “residential real estate-related transaction” means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers’ organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. “Housing for older persons” means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (b)(3) through (b)(5), as those provisions read on March 31, 1996.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner’s residence.

(12) For purposes of this section, “familial status” means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.”

Section 4. Section 49-2-403, MCA, is amended to read:

“49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) through ~~(5)~~ (6) and 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person’s capacity to make or be bound by contracts or other obligations.”

Section 5. Section 49-2-504, MCA, is amended to read:

“49-2-504. Informal investigation — conciliation — findings. (1) The department shall informally investigate the matters set out in the complaint promptly and impartially to determine whether there is reasonable cause to believe that the allegations are supported by a preponderance of the evidence.

(2) (a) During the informal investigation process and before the department issues a finding under subsection (7), the department may attempt to resolve the complaint by mediation.

(b) *If the parties to the complaint voluntarily agree to enter into the mediation process, the time period for the department to complete the informal investigation and issue a finding under subsection (7) may be extended up to 45 days. An agreement to enter into mediation serves to extend the time for hearing beyond 12 months as provided for in 49-2-505(2).*

~~(b)~~(c) If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department shall attempt to resolve the complaint by conciliation in a manner that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, found in the investigation.

(3) The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department’s notification of the complaint.

(4) If the department determines that the inclusion of documents or information obtained by the department would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

(5) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent’s receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.

(6) The department shall commence proceedings within 30 days after receipt of a complaint.

(7) (a) After the informal investigation, the department shall issue a finding on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. ~~The~~ *Unless the time period is extended as provided in subsection (2)(b), the* finding must be issued within 180 days after a complaint is filed, except that the department shall issue the finding within 120 days after a complaint is filed under 49-2-305.

(b) If the department finds that there is no reasonable cause to believe that unlawful discrimination occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process. After receipt of a notice of dismissal, a charging party may:

(i) continue the administrative process by filing objections with the commission as provided in 49-2-511; or

(ii) discontinue the administrative process and commence proceedings in district court as provided in 49-2-511.

(c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to 49-2-505."

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

Approved April 18, 2011

CHAPTER NO. 206

[HB 103]

AN ACT TO IMPROVE TAX ADMINISTRATION AND RECORDS MANAGEMENT BY AUTHORIZING THE DEPARTMENT OF REVENUE TO REPRODUCE ANY ORIGINAL TAX DOCUMENT AND TO MAINTAIN THE REPRODUCTION AS THE DEPARTMENT'S OFFICIAL RECORD; AUTHORIZING THE DEPARTMENT OF REVENUE TO DISPOSE OF ITS ORIGINAL TAX RECORDS THAT ARE REPRODUCED IN ACCORDANCE WITH RULES ADOPTED BY THE SECRETARY OF STATE IN CONSULTATION WITH THE STATE RECORDS COMMITTEE; AMENDING SECTIONS 2-6-110 AND 15-1-103, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 2-6-110, MCA, is amended to read:

"2-6-110. Electronic information and nonprint records — public access — fees. (1) (a) Except as provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly market rate for an administrative assistant in pay band 3 of the broadband pay plan, as provided for in 2-18-301, in the current fiscal year for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) ~~An~~ *Subject to 15-1-103, an* agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information."

Section 2. Section 15-1-103, MCA, is amended to read:

"15-1-103. Destruction Disposal of tax records authorized — procedure. (1) Notwithstanding the *any other* provisions of ~~any other chapter of this code law~~, the department of revenue is authorized to ~~destroy~~ *may dispose* of tax records more than 3 years old ~~as shall be determined to be of no if the records do not have any further value or as provided in subsection (3).~~

(2) Authorization for ~~destruction~~ *disposal* of tax records ~~shall~~ *must* be made by the director of ~~revenue~~ *the department* or authorized employees of the

department. A copy of the authorization and authenticated list ~~shall~~ of the records must be maintained by the department.

(3) *The department may dispose of its original tax records after those records have been reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013. The department shall maintain the reproduction as the public record. The reproduction or certified copy of the reproduction may be used in place of the department's original in any court or proceeding and has the same force and effect as the department's original record.*

Section 3. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2012.

(2) [Section 4] and this section are effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all tax records that exist on [the effective date of this section].

Approved April 18, 2011

CHAPTER NO. 207

[HB 178]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO USE THE FEDERAL SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM TO VERIFY THE LAWFUL PRESENCE IN THE UNITED STATES OF AN APPLICANT FOR A DRIVER'S LICENSE OR IDENTIFICATION CARD; AMENDING THE DEPARTMENT'S RULEMAKING AUTHORITY REGARDING ISSUANCE OF IDENTIFICATION CARDS; WITHDRAWING THE DEPARTMENT'S AUTHORITY TO APPOINT AGENTS FOR ISSUANCE OF IDENTIFICATION CARDS; AMENDING SECTIONS 61-5-105, 61-12-501, 61-12-502, AND 61-12-504, MCA; AND REPEALING SECTION 61-12-503, MCA.

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

Section 1. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended, revoked, or canceled or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

- (5) who is required by this chapter to take an examination;
- (6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;
- (7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may, in its discretion, issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations;
- (8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway;
- (9) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); or
- (10) ~~who does not submit proof satisfactory to the department that the applicant's~~ whose presence in the United States is *not* authorized under federal law. *When an applicant who is not a citizen of the United States applies for a driver's license, the department shall verify that the applicant is lawfully present in the United States by using the federal systematic alien verification for entitlements program.* The department may not accept as a primary source of identification a driver's license issued by a *another state if the state does not require that a driver licensed in that state be as proof that an applicant is lawfully present in the United States under federal law.*"

Section 2. Section 61-12-501, MCA, is amended to read:

"61-12-501. Authority of department to issue identification cards — lawful presence verification. (1) The department may issue an identification cards card to any person who maintains a residence in this state and whose presence in the United States is authorized under federal law.

(2) *When an applicant who is not a citizen of the United States applies for an identification card, the department shall verify that the applicant is lawfully present in the United States by using the federal systematic alien verification for entitlements program.*"

Section 3. Section 61-12-502, MCA, is amended to read:

"61-12-502. Rules for identification cards. The department shall formulate and adopt reasonable rules for the application for and issuing governing the issuance and cancellation of identification cards and cancellation thereof and shall require the furnishing of such information necessary for the purpose of this part that comport with the proof of identify, residence, and authorized presence standards for a driver's license issued under Title 61, chapter 5."

Section 4. Section 61-12-504, MCA, is amended to read:

"61-12-504. Fees for identification cards — expiration of cards. (1) ~~Fees not in excess of \$8 for identification cards issued pursuant to this part must be collected and deposited in the general fund.~~ *Fees not in excess of \$8 for identification cards issued pursuant to this part must be collected and deposited in the general fund.*

(2) A person with a disability, as defined in 39-30-103, may obtain a free identification card. An individual discharged from any correctional facility must be furnished a free identification card upon release, discharge, or parole.

(2)(3) (a) ~~Each~~ An identification card expires on the anniversary of the date of birth of the holder 4 years after the date of issue.

(b) *An identification card issued to a person whose presence in the United States is temporarily authorized under federal laws expires, as determined by the department, no later than the expiration date of the official document issued to the person by the United States citizenship and immigration services of the department of homeland security that authorizes the person's presence in the United States.*

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

61-12-503. Agents for issuance of identification cards.

Approved April 18, 2011

CHAPTER NO. 208

[HB 191]

AN ACT REVISING THE LICENSING AND REGISTRATION PROVISIONS FOR RETAIL FOOD ESTABLISHMENTS; EXEMPTING THE SALE OF BAKED GOODS AND PRESERVES FOR CHARITABLE COMMUNITY PURPOSES FROM THE LICENSING REQUIREMENTS; REVISING THE REGISTRATION PROVISIONS FOR CERTAIN NONPROFIT ORGANIZATIONS; AMENDING SECTIONS 50-50-103 AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, homemade foods are often the staple of fundraising efforts at the grassroots level in many communities where impromptu, nonprofessionally organized events that include homemade food are conducted to benefit individuals or organizations; and

WHEREAS, some fundraising events are not organized or sponsored by a nonprofit entity that has attained that status by meeting the requirements of 26 U.S.C. 501; and

WHEREAS, in many small communities, only a handful of nonprofit organizations are registered with the Internal Revenue Services as tax-exempt organizations; and

WHEREAS, many groups or individuals that want to offer their assistance to others by making and donating homemade foods for charitable purposes do not have the option of being affiliated with a registered nonprofit organization; and

WHEREAS, 50-50-202, MCA, is anti-community because it limits and eliminates the ability of community-based organizations, churches, and individuals from offering "the fruits of their kitchen labors" for fundraising purposes.

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

Section 1. Section 50-50-103, MCA, is amended to read:

"50-50-103. Department authorized to adopt rules — advisory council. (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of

food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons *selling baked goods or preserves at farmer's markets or exclusively for a charitable community purpose*.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens.

(3) (a) The department shall establish a food safety task force or advisory council to assist in the development of administrative rules or to review any proposed legislation related to the provisions of this chapter.

(b) The task force or advisory council must be composed of equal numbers of representatives of the food establishments and representatives of state and local government.

(c) The department shall present administrative rules and any legislation to be proposed by the department to the task force or advisory council prior to its proposal or introduction. When the department learns of proposed legislation related to the provisions of this chapter that has not been proposed by the department, the department shall provide copies of that legislation for review by the task force or advisory council and shall provide to the legislature any comments of the task force or advisory council."

Section 2. Section 50-50-202, MCA, is amended to read:

"50-50-202. Establishments exempt from license requirement — farmer's market records. (1) Establishments owned or operated by the state or a political subdivision of the state that employ a full-time sanitarian are exempt from licensure but shall comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection:

~~(a)(i) must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and~~

~~(b) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department; and~~

(ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department.

(b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or in person, before the event. The notification required is limited to the date and time of the event, items planned to be sold, and an estimate of the number of people expected to be served at the event.

(3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market.

(b) A license is not required of a person selling baked goods or preserves at a farmer's market or *exclusively for a charitable community purpose*.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent."

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

Approved April 18, 2011

CHAPTER NO. 209

[HB 213]

AN ACT PROVIDING FOR THE OPERATION OF ELECTRIC VEHICLES BY DISABLED PERSONS; CREATING A LOW-SPEED RESTRICTED DRIVER'S LICENSE; DEFINING "LOW-SPEED ELECTRIC VEHICLE" AND "GOLF CART"; PROHIBITING THE OPERATION OF A LOW-SPEED ELECTRIC VEHICLE ON CERTAIN HIGHWAYS; PROVIDING FOR THE REGISTRATION OF A LOW-SPEED ELECTRIC VEHICLE AND A GOLF CART OPERATED BY A PERSON WITH A LOW-SPEED RESTRICTED DRIVER'S LICENSE; ALLOWING FOR OPERATION OF A LOW-SPEED ELECTRIC VEHICLE WITHOUT A MOTORCYCLE ENDORSEMENT; REQUIRING CERTAIN EQUIPMENT ON A LOW-SPEED ELECTRIC VEHICLE; AMENDING SECTIONS 10-3-1307, 23-1-105, 61-1-101, 61-3-201, 61-3-301, 61-3-312, 61-3-321, 61-3-332, 61-5-102, 61-6-158, 61-9-220, AND 61-9-432, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Low-speed electric vehicle — golf cart operated by person with low-speed restricted driver's license — operating requirements.

(1) A low-speed electric vehicle may be operated only by a person with a low-speed restricted driver's license.

(2) A low-speed electric vehicle or golf cart operated by a person with a low-speed restricted driver's license may be operated only on a highway for which the posted speed limit does not exceed 25 miles per hour.

(3) A low-speed electric vehicle or golf cart operated by a person with a low-speed restricted driver's license may not cross a highway with a posted speed limit of greater than 45 miles per hour.

(4) Except as provided in subsections (1) through (3), the provisions of this chapter apply to a low-speed electric vehicle or golf cart operated by a person with a low-speed restricted driver's license.

Section 2. Low-speed restricted driver's license. (1) The department may issue a low-speed restricted driver's license to a person who is physically or otherwise impaired in a manner and degree that prevent the person from safely operating a motor vehicle across the range of speeds permitted or required on a public highway.

(2) (a) To qualify for a low-speed restricted driver's license, an applicant shall submit to the department a medical evaluation or statement from a treating physician that attests to the person's impairment and resulting inability to safely operate a motor vehicle across the range of speeds permitted or required on a public highway.

(b) The applicant must be otherwise qualified for a driver's license under this chapter and shall apply for a driver's license under 61-5-107, pay the fees

required in 61-5-111, and pass the vision test, the knowledge test, and the road test required under 61-5-110. The road test must be modified to conform to the operational limitations of the vehicle.

(3) The department may issue a low-speed restricted instruction permit, valid for 30 days from the date of issuance, to a person who qualifies for a low-speed restricted driver's license under this section and who passes the vision test and knowledge test required in 61-5-110. A permit holder may operate a low-speed electric vehicle or golf cart pursuant to [section 1] while in the immediate possession of the permit and accompanied by a licensed driver seated beside the permit holder.

Section 3. Section 10-3-1307, MCA, is amended to read:

“10-3-1307. Responsibilities of department of transportation — assessment and collection of fees — issuance of permits — inspection of motor carriers. (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of \$2,500 must be assessed for each cask designed for transport by truck; and

(b) a fee of \$4,500 must be assessed for the first cask designed for transport by rail and a fee of \$3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and ~~61-3-321(13)~~ 61-3-321(14) and 61-10-127 do not apply.”

Section 4. Section 23-1-105, MCA, is amended to read:

“23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in ~~61-3-321(18)(a)~~ 61-3-321(19)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department.”

Section 5. Section 61-1-101, MCA, is amended to read:

“61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) “Authorized agent” means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department’s motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), “person” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) “Authorized agent agreement” means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) “Bus” means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(7) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(8) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in

part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (8):

(i) “farmer” means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) “gross combination weight rating” means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) “gross vehicle weight rating” means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) “school bus” has the meaning provided in 49 CFR 383.5.

(9) “Commission” means the state transportation commission.

(10) “Custom-built motorcycle” means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer’s original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(11) “Custom vehicle” means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer’s original design or has a body constructed from nonoriginal materials.

(12) “Customer identification number” means:

(a) a driver’s license or identification card number when the customer is an individual who has been issued a driver’s license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(13) (a) “Dealer” means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (13)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(14) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(15) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(16) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(17) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(18) "Driver" means a person who drives or is in actual physical control of a vehicle.

(19) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(20) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(21) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(22) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

(22)(23) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(23)(24) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(24)(25) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(25)~~(26) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

~~(26)~~(27) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

~~(27)~~(28) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(29) "*Low-speed electric vehicle*" means a motor vehicle, upon or by which a person may be transported, that:

(a) has four wheels;

(b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;

(c) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(f) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565; and

(g) is equipped as provided in 61-9-432.

(30) "*Low-speed restricted driver's license*" means a license or permit limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

(a) a temporary license or instruction permit;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of [section 2], whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

~~(28)~~(31) "Manufactured home" has the meaning provided in 15-24-201.

~~(29)~~(32) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

~~(30)~~(33) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

~~(31)~~(34) (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

~~(32)~~(35) "Mobile home" or "houstrailer" has the meaning provided in 15-24-201.

~~(33)~~(36) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

~~(34)~~(37) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(35)~~(38) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(36)~~(39) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(37)~~(40) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(38)~~(41) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(39)~~(42) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(40)~~(43) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; ~~and~~

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; *and*

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(41)~~(44) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(42)~~(45) "Nonresident" means a person who is not a Montana resident.

~~(43)~~(46) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(44)(47) (a) “Off-highway vehicle” means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

(45)(48) “Operator” means a person who is in actual physical control of a motor vehicle.

(46)(49) “Owner” means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(47)(50) “Person” means an individual, corporation, partnership, association, firm, or other legal entity.

(48)(51) “Personal watercraft” means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(49)(52) “Pole trailer” means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(50)(53) “Police officer” means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(51)(54) (a) “Quadricycle” means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(52)(55) “Railroad” means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(53)(56) (a) “Railroad train” or “train” means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(54)(57) “Recreational vehicle” includes a motor home, travel trailer, or camper.

(55)(58) “Registration” or “register” means the act or process of creating an electronic record, maintained by the department, of the assignment of a license

plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(56)(59) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(57)(60) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(58)(61) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

(59)(62) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(60)(63) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(61)(64) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(62)(65) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

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

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

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

(66)(69) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance

machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(67)~~(70) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(68)~~(71) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(69)~~(72) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(70)~~(73) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

~~(71)~~(74) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(72)~~(75) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(73)~~(76) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

~~(74)~~(77) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

- (i) required vehicle and owner information; and
- (ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(75)~~(78) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(76)~~(79) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(77)~~(80) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(78)~~(81) "Travel trailer" means a vehicle:

- (a) that is 40 feet or less in length;
- (b) that is of a size or weight that does not require special permits when towed by a motor vehicle;
- (c) with gross trailer area of less than 320 square feet; and
- (d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(79)~~(82) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(80)~~(83) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(81)~~(84) "Under the influence" has the meaning provided in 61-8-401.

~~(82)~~(85) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(83)~~(86) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(84)(87) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(85)(88) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

(86)(89) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(87)(90) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 6. Section 61-3-201, MCA, is amended to read:

"61-3-201. Certificate of title required — exclusions. (1) Except as provided in subsection (2), 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 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 of this state;

(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; ~~or~~
- (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 7. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, 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) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must have a single license plate displayed on the rear of the vehicle. A custom vehicle or 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. All other motor vehicles must have one license plate displayed on the front and one license plate displayed on the rear of the motor vehicle.

(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;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of standard license plates including military, veteran, and amateur radio license plates, or any license plates that have been

issued for 5 or more years after the replacement of the license plates is required under 61-3-332(3)(a), except as provided in 61-3-332(3)(c) and (3)(d), 61-3-448, or 61-3-468.

(4) For the purposes of this section, “conspicuously displayed” means that the required license plates are obviously visible and firmly attached to:

(a) the front bumper and the rear bumper of a motor vehicle equipped with front and rear bumpers, except for a custom vehicle or street rod as provided in subsection (1)(b); or

(b) a clearly visible location on the rear of a trailer, semitrailer, pole trailer, or travel trailer.”

Section 8. Section 61-3-312, MCA, is amended to read:

“61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle’s registration period following the expiration of the motor vehicle’s registration.

(2) Except as provided in subsection (4), a person may renew a motor vehicle’s registration by submitting full payment for the fees or taxes required under 61-3-303 and ~~61-3-321(12)~~ 61-3-321(13) to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer may use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

(4) Beginning July 1, 2011, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.

(5) Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

(6) The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle’s registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle’s registration period and if, beginning July 1, 2011, the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157.

(7) The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208.”

Section 9. Section 61-3-321, MCA, is amended to read:

“61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through ~~(19)~~ (20):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

- (a) if the vehicle is 4 or less years old, \$217;
- (b) if the vehicle is 5 through 10 years old, \$87; and
- (c) if the vehicle is 11 or more years old, \$28.

(3) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

- (a) if the declared weight is less than 6,000 pounds, \$61.25; or
- (b) if the declared weight is 6,000 pounds or more, \$148.25.

(4) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

- (a) 2,850 pounds and over, \$10; and
- (b) under 2,850 pounds, \$5.

(5) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is \$61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is \$22.75.

(7) (a) 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; and
- (iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection ~~(14)~~ (15), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50.

(b) An additional fee of \$16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection ~~(14)~~ (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 ~~(14)~~ (15), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

- (a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;
- (b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and
- (c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(11) (a) Except as provided in subsections (11)(b) and ~~(14)~~ (15), the one-time registration fee for a snowmobile is \$60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

- (A) a fee of \$40.50 in the first year of registration; and
- (B) if the business reregisters the snowmobile for a second year, a fee of \$20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

~~(12)~~ (a) *The one-time registration fee for a low-speed electric vehicle is \$25.*

~~(b)~~ *The one-time registration fee for a golf cart that is owned by a person who has or is applying for a low-speed restricted driver's license is \$25.*

~~(12)~~(13) (a) Except as provided in subsection ~~(12)~~(b) (13)(b), a fee of \$10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The \$10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of \$15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection ~~(12)~~ (13) must be deposited in the account established under 61-6-158, except that \$2 of the fee imposed in subsection ~~(12)~~(a) (13)(a) must be deposited in the state general fund.

~~(13)~~(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)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

~~(14)~~(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, or

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.

~~(15)~~(16) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

~~(16)~~(17) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

~~(17)~~(18) The fees imposed by subsections (2) through ~~(11)~~ (12) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

~~(18)~~(19) (a) Unless a person exercises the option in subsection ~~(18)~~(b) (19)(b), an additional fee of \$4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the \$4 fee, the department of fish, wildlife, and parks shall use \$3.50 for state parks, 25 cents for fishing access sites, and 25 cents 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 \$4 fee provided for in subsection ~~(18)~~(a) (19)(a). If a written election is made, the fee may not be collected.

~~(19)~~(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 \$5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

~~(20)~~(21) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 10. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration

decals must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate if, upon renewal of registration under ~~61-3-332~~ *this section*, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until January 1, 2015, and upon payment of the fee required in ~~61-3-321(12)(b)~~ *61-3-321(13)(b)*, a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number

combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series.

Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may *and a low-speed electric vehicle or golf cart operated by a person with a low-speed restricted driver's license as provided in [section 2] must*, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.”

Section 11. Section 61-5-102, MCA, is amended to read:

“61-5-102. Drivers to be licensed — penalties. (1) (a) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(b) Except as provided in subsection (1)(c), the penalty for a first violation of this section is a fine of not more than \$500, imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less than 2 days or more than 6 months.

(c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has not renewed the license as provided in 61-5-111(3)(c) is not subject to the penalties in subsection (1)(b).

(2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words “motorcycle endorsement”.

(ii) A motorcycle endorsement is not required for the operation of a *low-speed electric vehicle* or a motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words “commercial driver’s license”, and the license bears the proper endorsement for:

- (i) the specific vehicle type or types being operated; or
- (ii) the passengers or type or types of cargo being transported.

(3) *A low-speed restricted driver’s license is not valid for the operation of a motor vehicle other than a low-speed electric vehicle or a golf cart.*

~~(3)~~(4) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver’s license valid under the provisions of this chapter.”

Section 12. Section 61-6-158, MCA, is amended to read:

“61-6-158. Vehicle insurance verification and license plate operating account. (1) There is a vehicle insurance verification and license plate operating account in the state special revenue fund type as provided in 17-2-102.

(2) Fees imposed under 61-3-321(7)(b)(ii) and ~~(12)~~ (13), 61-3-333, 61-3-465(1)(b)(i), 61-3-480(2)(c)(i), or 61-3-562(1)(a)(ii) or established and collected under 61-6-105 must be deposited in the account.

(3) The money in the vehicle insurance verification and license plate operating account must be used by the department to pay costs incurred in or associated with the operation, maintenance, and enhancement of the system established under 61-6-157 and the contract required in 61-3-338 for the manufacture and distribution of license plates by Montana correctional enterprises.”

Section 13. Section 61-9-220, MCA, is amended to read:

“61-9-220. Multiple-beam road-lighting equipment. Except as provided in this part, the headlamps or the auxiliary driving lamps or combination of both on a motor vehicle other than a motorcycle, quadricycle, ~~or~~ motor-driven cycle, *or low-speed electric vehicle*, must be so arranged so that the driver may select between distributions of light projected to different elevations. The selection can be made automatically, subject to the following limitations:

(1) There must be an uppermost distribution of light, or composite beam, capable of revealing persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(2) There must be a lowermost distribution of light, or composite beam, capable of revealing persons and vehicles at a distance of at least 100 feet ahead. On a straight level road under any condition of loading the high-intensity portion of the beam may not be directed to strike the eyes of an approaching driver.

(3) A motor vehicle, other than a motorcycle, quadricycle, ~~or~~ motor-driven cycle, *or low-speed electric vehicle*, manufactured after January 1, 1956, that has multiple-beam road-lighting equipment must be equipped with a beam indicator that must be lighted whenever the uppermost distribution of light from the headlamps is in use, and may not otherwise be lighted. The indicator must be readily visible without glare to the driver of the vehicle.”

Section 14. Section 61-9-432, MCA, is amended to read:

“61-9-432. ~~Medium-speed~~ Low-speed and medium-speed electric vehicles — required equipment. ~~A medium-speed electric vehicle (1)~~

Low-speed electric vehicles and medium-speed electric vehicles, as defined in 61-1-101, must be equipped with:

(1)(a) headlamps, front and rear turn signal lamps, taillamps, and stop lamps;

(2)(b) three red reflectors, two of which must be placed on each side as far to the rear of the vehicle as practicable, and one of which must be placed on the rear of the vehicle;

(3)(c) an exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror;

(4)(d) a parking brake;

(5)(e) a windshield that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.205; *and*

(6)(f) a seatbelt assembly that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.209; ~~and~~.

(7)(2) *A medium-speed electric vehicle must be equipped with a roll bar, roll cage, or crush-proof body design.*"

Section 15. Codification instruction. (1) [Section 1] is 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 [section 1].

(2) [Section 2] 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 2].

Section 16. Effective date. [This act] is effective January 1, 2012.

Section 17. Grandfather clause. A low-speed electric vehicle or golf cart that meets the definitions provided in 61-1-101 and that was titled and registered under a one-time registration provision as a light vehicle or quadricycle prior to [the effective date of this act] is considered legally titled and registered if operated by a person with a low-speed restricted driver's license.

Approved April 18, 2011

CHAPTER NO. 210

[HB 251]

AN ACT PROVIDING THAT A REAR FLAG VEHICLE ESCORT IS NOT REQUIRED FOR CERTAIN VEHICLES OVER 12 1/2 FEET IN WIDTH EXCEPT IF THE VEHICLE PASSES THROUGH A HAZARDOUS AREA; AND AMENDING SECTION 61-10-102, MCA.

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

Section 1. Section 61-10-102, MCA, is amended to read:

"61-10-102. Width — ~~definition~~ definitions. (1) Except as provided in subsections (2) and (3), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay that is moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than

12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.

(b) An implement of husbandry or a vehicle used for hauling hay that exceeds 16 1/2 feet in width and that is traveling on an interstate or a four-lane highway must be followed by a flag vehicle escort.

(c) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(d) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) (a) The width of a recreational vehicle, as defined in 61-1-101, and a camper, as defined in 61-1-101, that is being operated for noncommercial purposes may exceed 102 inches if:

(i) the excess width is attributable to recreational vehicle or camper appurtenances that do not extend beyond the exterior rearview mirrors of the recreational vehicle, the camper, a vehicle being towed by the recreational vehicle, or the motor vehicle providing motive power; and

(ii) the rearview mirrors extend only the distance necessary to provide the appropriate field of view for the vehicle before the recreational vehicle or camper appurtenances are attached.

(b) For the purposes of this section, "recreational vehicle or camper appurtenances" means an awning and its support hardware or any appendage that is intended to be an integral part of the recreational vehicle or camper and that is installed by the manufacturer or dealer.

(4) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

(5) *Except as provided in subsections (2)(a) and (2)(b), a rear flag vehicle escort is not required for a vehicle that exceeds 12 1/2 feet in width, that is hauling or towing an implement of husbandry, construction equipment, or forestry equipment, and that is operating under this section or as authorized by special permit issued under 61-10-121 through 61-10-125 if the vehicle is operating at highway speed or with the flow of traffic.*

~~(5)~~(6) For the purposes of this section, ~~“flag vehicle”~~ *the following definitions apply:*

(a) *“Construction equipment” means any vehicle, machine, or attachment designed or adapted for and used in construction, heavy construction, highway construction, and remodeling work.*

(b) *“Flag vehicle” means a vehicle equipped as required by law or by department of transportation rule to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs must be removed.”*

Approved April 18, 2011

CHAPTER NO. 211

[HB 288]

AN ACT CLARIFYING THAT THE RESIDENCY OF A CHILD ENROLLED IN SCHOOL WHO IS RESIDING WITH A LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE IS THE RESIDENCE OF THE LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE; CLARIFYING ACTIONS THAT A SCHOOL DISTRICT MAY TAKE WHEN A STUDENT WHO WAS SUBJECT TO FORMAL DISCIPLINARY ACTION AT A PREVIOUS SCHOOL SEEKS TO ENROLL; CLARIFYING THE LANGUAGE OF THE CARETAKER RELATIVE AFFIDAVIT; MAKING FINANCIAL RESPONSIBILITY FOR SPECIAL EDUCATION CONSISTENT WITH OTHER PROVISIONS REGARDING RESIDENCY; AMENDING SECTIONS 1-1-215, 20-5-321, 20-5-502, 20-5-503, AND 20-7-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 1-1-215, MCA, is amended to read:

“1-1-215. Residence — rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may be only one residence. If a person claims a residence within Montana for any purpose, then that location is the person’s residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

(4) The residence of an unmarried minor is:

(a) the residence of the minor’s parents;

(b) if one of the parents is deceased or the parents do not share the same residence, the residence of the parent having legal custody;

(c) if neither parent has legal custody, the residence of the ~~parent with whom the minor customarily resides~~ *legal guardian or custodian appointed by a court of competent jurisdiction*; or

(d) if the conditions in 20-5-502 are met, ~~the last-known residence of the parent with whom the minor normally resided immediately prior to residing with the residence of~~ the caretaker relative.

(5) In the case of a controversy, the district court ~~may declare has jurisdiction over which parental~~ residence is the residence of an unmarried minor.

~~(6) Except as provided in Title 20, chapter 5, part 5, the residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.~~

(6) Except as provided in Title 20, chapter 5, part 5, and this section, the residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or an act of the minor's guardian.

(7) The residence can be changed only by the union of act and intent.”

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:

(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) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) 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) may continue to attend the elementary school after the other child has left the high 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; ~~or.~~

~~(f) the child is residing with a caretaker relative who wants to enroll the child pursuant to 20-5-502.~~

(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" means a parent, a guardian, the trustees of the district of residence, or 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 20-5-502, MCA, is amended to read:

"20-5-502. Enrollment by caretaker relative — residency — affidavit. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section, enroll the child in school using the rules of residence provided in 1-1-215 if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact either of the parents ~~following the after the parents voluntary voluntarily leaving leave~~ of the child with the caretaker relative or ~~the a parent or parents~~ whom the caretaker relative is able to contact ~~refuse is unable or unwilling~~ to regain custody of the child ~~after a written or oral request by the relative to do so~~;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the educational needs of the child; and

(e) a caretaker relative educational authorization affidavit is completed in compliance with 20-5-503.

(2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may enroll the child in school unless the child's residency with the caretaker relative is primarily for the purpose of:

(a) attending a particular school; or

(b) participating in athletics at a particular school.

(3) ~~If~~ *If* the child was subject to formal disciplinary action, including suspension or expulsion, at the child's previous school, the school *district* in which the child is to be enrolled *caretaker relative seeks to enroll the child may either implement the previous school district's disciplinary action without further due process or hold a hearing and determine whether the student's conduct in the previous school district merits denial of enrollment. If the district decides to enroll the child, then the school district* may require the child to comply with a behavior contract as a condition of enrollment.

(4) The school district may require additional reasonable evidence that the caretaker relative lives at the address provided in the affidavit."

Section 4. Section 20-5-503, MCA, is amended to read:

"20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may

require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S

EDUCATIONAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by 20-5-503, MCA.

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic

program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

The child is now residing with me on a full-time basis.

~~I am unable to locate or contact the parents of the child at this time to notify the parents of my intended authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the parents do so.~~

No adequate provision, such as appointment of a *legal custodian* or guardian ~~ad litem~~ or execution of a *notarized* power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.

5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this day of, 20....

.....

(Signature of caretaker relative)

.....

(Signature, county, state, and seal of notary public)

7. NOTICES TO CARETAKER RELATIVE:

a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is effective until the earlier of:

i. the end of the first school year after delivery of the affidavit to a school district;

ii. revocation by the caretaker relative; or

iii. the child no longer resides with the caretaker relative.

8. ADDITIONAL INFORMATION:

~~a.d. TO CARETAKER RELATIVES: If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who received the affidavit from someone else.~~

~~b. TO PUBLIC AND PRIVATE SCHOOL OFFICIALS AND PUBLIC AND PRIVATE HEALTH CARE PROVIDERS:~~

~~(1) A public or private school official or a public school district official may require additional reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.~~

~~(2) A public or private entity or individual who acts in good faith reliance upon a caretaker relative educational authorization affidavit to enroll a child in school or to provide educational services or educationally related medical care,~~

or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on an affidavit completed in compliance with 20-5-503, MCA.”

Section 5. Section 20-7-420, MCA, is amended to read:

“20-7-420. Residency requirements — financial responsibility for special education. (1) Except for a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a child’s district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215, ~~unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent’s last known district of residence is the child’s district of residence.~~

(2) The superintendent of public instruction is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children’s psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district’s costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.”

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved April 18, 2011

CHAPTER NO. 212

[HB 300]

AN ACT REVISING LABOR LAWS; PROVIDING THAT THE WORKDAY FOR UNDERGROUND MINERS, SMELTER WORKERS, AND EMPLOYEES AT STRIP MINES, CEMENT PLANTS, AND QUARRIES MAY NOT EXCEED 8 HOURS A DAY UNLESS THE EMPLOYER AND EMPLOYEE AGREE TO A

WORKDAY OF MORE THAN 8 HOURS; REVISING PENALTIES; AND AMENDING SECTIONS 39-4-103, 39-4-104, 39-4-107, AND 39-4-109, MCA.

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

Section 1. Section 39-4-103, MCA, is amended to read:

“39-4-103. Underground miners and smelter workers. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, ~~is may not exceed 8 hours a day, except in cases of emergency when life and property are in imminent danger unless the employer and employee agree to a workday of more than 8 hours:~~

(a) *through a collective bargaining agreement when a collective bargaining unit represents the employee; or*

(b) *by mutual agreement when a collective bargaining unit is not recognized.*

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals ~~is may not exceed 8 hours a day, except in cases of emergency when life or property is in imminent danger unless the employer and employee agree to a workday of more than 8 hours:~~

(a) *through a collective bargaining agreement when a collective bargaining unit represents the employee; or*

(b) *by mutual agreement when a collective bargaining unit is not recognized.*

(3) A person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction for each offense is subject to a fine of not less than \$100 or more than \$600 or by imprisonment in the county jail for a period of not less than ~~1 month or more than 7 6 months, or both.”~~

Section 2. Section 39-4-104, MCA, is amended to read:

“39-4-104. Strip mining. (1) For the purpose of this section, “strip mining” ~~is defined as means~~ the removal of the overburden and coal or other materials from the ground and all of the operations pertaining ~~thereto to the removal,~~ without the necessity of providing timbers for ~~the holding of said the~~ ground in place.

(2) ~~A~~ *The* period of employment may not exceed ~~more than 8 hours a day will constitute a day’s labor of all for~~ employees working in strip mining, ~~except in cases of emergencies for the protection of life or property when same is in danger unless the employer and employee agree to a workday of more than 8 hours:~~

(a) *through a collective bargaining agreement when a collective bargaining unit represents the employee; or*

(b) *by mutual agreement when a collective bargaining unit is not recognized.*

(3) Any person, company, corporation, or lessee of ~~the same a strip mine who shall violate that violates~~ the provisions of this section shall upon conviction be punished by a fine of not less than \$50 or more than \$600 or by imprisonment of not less than ~~30 days or more than 7 6 months, or both such fine and imprisonment.~~ Each and every day that ~~such the~~ person, company, corporation, or lessee ~~may continue continues~~ to violate the provisions of this section ~~shall must~~ be considered a separate and distinct offense and ~~shall~~ be punished as such.”

Section 3. Section 39-4-107, MCA, is amended to read:

“39-4-107. State and municipal governments, and school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day’s work in all works and undertakings carried on or aided by any municipal or county

government, the state government, or a first-class school district, on all contracts let by them, and for all janitors, ~~(except in courthouses of sixth-sixth-class and seventh-class counties)~~, engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by a municipal, county, or state government or first-class school district. ~~A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal.~~ This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. An employee may not be required to work in excess of 8 hours in any one workday if the employee ~~prefers not to~~ *is opposed to working more than 8 hours*.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by ~~the mutual agreement of the employer and employee~~ when a bargaining unit is not recognized."

Section 4. Section 39-4-109, MCA, is amended to read:

"39-4-109. Cement plants and quarries. (1) ~~(a) A~~ *The period of employment may not exceed 8 hours a day shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries unless the employer and employee agree to a workday of more than 8 hours:*

(i) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(ii) by mutual agreement when a collective bargaining unit is not recognized.

(b) Collective bargaining agreements covering cement plants and associated quarries that propose to extend the employment period beyond 8 hours a day must contain provisions that delineate the specific hours of work or other allowable situations agreed upon by the employer and the collective bargaining agent.

(2) Any person, corporation, agent, manager, or employer ~~who shall violate any of the provisions that violates a provision of this section shall be~~ *is* guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 or more than \$600 or by imprisonment in the county jail for not less ~~than 30 days or more than 7 6 months, or by both such fine and imprisonment."~~

Approved April 18, 2011

CHAPTER NO. 213

[HB 352]

AN ACT ALLOWING THE USE OF BOTTLED WATER FOR A PUBLIC WATER SYSTEM TO ACHIEVE COMPLIANCE WITH A MAXIMUM CONTAMINANT LEVEL FOR NITRATE; AMENDING SECTION 75-6-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-6-107, MCA, is amended to read:

“75-6-107. Variances and exemptions. (1) *The Except as provided in subsection (3), the department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the board.*

(2) *A Except as provided in subsection (3), a variance or exemption granted pursuant to this section shall must be accompanied by a compliance plan specifying a time schedule for compliance.*

(3) *The department may grant for a period of up to 5 years a variance or exemption for a public water system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance or exemption must include the requirement that the owner of the public water system warn the public that the tap water is not potable and could pose a health risk if consumed by:*

(a) *posting signs at locations required by the variance or exemption for the period granted by the variance or exemption; and*

(b) *delivering annual notices as required by the variance or exemption to users of the public water system.*

(4) *A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department’s decision to the board as provided in the Montana Administrative Procedure Act.”*

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

Approved April 18, 2011

CHAPTER NO. 214

[HB 380]

AN ACT GENERALLY REVISING WATER AND SEWER LAWS; REVISING THE METHOD OF ESTABLISHING THE MONTHLY SALARY FOR A MEMBER OF THE BOARD OF DIRECTORS OF A COUNTY WATER AND SEWER DISTRICT; PROVIDING THAT A BOARD MEMBER MAY RECEIVE A CERTAIN SALARY IF PROPOSED BY THE PRESIDENT OF THE BOARD AND APPROVED BY THE MEMBERS OF THE DISTRICT; CLARIFYING THE DUTIES OF BOARD PRESIDENTS; AUTHORIZING A VOTE ON THE MONTHLY SALARY OF BOARD MEMBERS; PROVIDING CRITERIA FOR DETERMINING A VACANCY ON A WATER AND SEWER DISTRICT BOARD; ELIMINATING DATE REQUIREMENTS FOR SUBMITTING WATER AND SEWER DISTRICT ASSESSMENTS TO THE CLERK AND RECORDER; REPEALING PROCEDURES FOR CHALLENGING MUNICIPAL SEWER SYSTEM RATES BY FILING A COMPLAINT WITH THE PUBLIC SERVICE COMMISSION; ELIMINATING PUBLIC SERVICE COMMISSION REGULATION OF MUNICIPAL SEWER AND WATER

SYSTEMS AND RATES; AMENDING SECTIONS 7-3-4302, 7-13-2225, 7-13-2262, 7-13-2272, 7-13-2273, 7-13-2282, 7-13-4312, 69-3-101, AND 76-3-103, MCA; REPEALING SECTIONS 7-13-4208 AND 7-13-4310, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Vacancies. A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

- (1) death;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
- (3) resignation;
- (4) removal from office;
- (5) neglect or refusal to perform the duties required by this part for 3 consecutive months, except when prevented by sickness or when absent from the district by permission of the board of directors;
- (6) conviction of a felony or a violation of official duties; or
- (7) the decision of a court declaring the incumbent's election or appointment void.

Section 2. Section 7-3-4302, MCA, is amended to read:

"7-3-4302. Construction. (1) Except as otherwise provided in ~~this part and part 44 and this part~~, all acts, and parts of acts, and all laws now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as are not repealed by this part and part 44 except insofar as the same may be in ~~and this part unless they conflict or are inconsistent with the provisions of this part and part 44 and this part.~~

(2) ~~This part and part Part 44 and this part~~ do not repeal or modify Title 69, chapter 3, or 69-4-101, and ~~this part and part 44 and this part~~ do not curtail or impair the power or authority of the public service commission, and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance, or other action authorized by this part or part 44 in conflict with any such order, regulation, or action of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this part and part 44 to be made to the public service commission shall conform to the fiscal year of the ~~city or town.~~

Section 3. Section 7-13-2225, MCA, is amended to read:

"7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness, and, if applicable, the vote on the proposed monthly salary for members of the board of directors so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election shall *must* contain the names of the candidates, and the details concerning the bonded indebtedness, and, if applicable, the proposed monthly salary for members of the board of directors as provided in 7-13-2273.

(3) Candidates for the office of director shall be nominated in the manner required by 7-13-2241 and 7-13-2246.”

Section 4. Section 7-13-2262, MCA, is amended to read:

“7-13-2262. Insufficient candidates — vacancies on board of directors — appointment of entire board. (1) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board of directors shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of directors shall make an appointment to fill the position and the term is the same as if the director were elected.

(2) (a) Except as provided in subsections (3) and (4), any vacancy in the board of directors, whether the vacant office is elective or appointive, must be filled by the remaining directors.

(b) *A vacancy must be determined in accordance with [section 1].*

(3) If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.

(4) If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (3), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.

(5) Following the appointment of a board in accordance with subsection (3), the directors must be elected as provided in this part.”

Section 5. Section 7-13-2272, MCA, is amended to read:

“7-13-2272. Duties of board president. (1) The president shall sign all contracts on behalf of the district and perform ~~such~~ other duties as may be imposed by the board of directors.

(2) *The president may propose a monthly salary in excess of the amounts provided in 7-13-2273(2) for the members of the board of directors. The proposed monthly salary must be approved by the voters in the district pursuant to 7-13-2273.”*

Section 6. Section 7-13-2273, MCA, is amended to read:

“7-13-2273. Compensation of members of board — approval by voters of district. (1) Each of the members of the board of directors ~~shall~~ may receive a monthly salary. ~~that may not exceed the following amounts:~~

(1) ~~\$60 in districts with a population of no more than 500 persons;~~

(2) ~~\$80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and~~

(3) ~~\$100 in districts with a population of more than 5,000 persons.~~

(2) *Except as provided in subsection (3), a salary may not exceed the following amounts:*

(a) *\$60 in districts with a population of no more than 500 persons;*

(b) *\$80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and*

(c) \$100 in districts with a population of more than 5,000 persons.

(3) A salary may exceed the amounts provided under subsection (2) if the salary is in an amount proposed by the president of the board and approved by one of the following methods:

(a) an affirmative vote of the majority of the votes cast by the qualified voters of the district in an election held either by mail ballot, as provided in Title 13, chapter 19, or in conjunction with a regular or primary election; or

(b) an affirmative vote of the majority of the qualified voters of the district who are present and voting at an annual organizational meeting of the district.

(4) A newly elected member of the board of directors must receive the monthly salary, if any, established for the board member position at the time that the member was elected.

(5) A vote on the question of the proposed salary for members of the board of directors may be held in combination with the elections provided in 7-13-2225 if the vote is conducted by mail ballot or held in conjunction with a regular or primary election.

(6) (a) Notice of the vote on the proposed monthly salary for the members of the board of directors must be provided to the members of the district and state the following:

(i) the date on which the vote will be held;

(ii) the manner in which the vote will be held;

(iii) the amount of the proposed monthly salary for the members of the board of directors; and

(iv) any other information regarding the vote that may be necessary.

(b) The notice must be published as provided in 13-1-108.

(7) For purposes of this section, "qualified voters of the district" means the voters qualified to vote on the question of the creation of the district as provided in 7-13-2212."

Section 7. Section 7-13-2282, MCA, is amended to read:

"7-13-2282. Hearing on assessment. (1) At the time fixed, the board of directors shall meet and hear all objections and for that purpose may adjourn from day to day.

(2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the secretary, must be delivered to the county clerk and recorder of the county in which the lot, tract, or parcel is located within 2 days after passage of the resolution and not later than July 15 preceding the county's next fiscal year.

(3) At any time within 30 days after the date of the first publication of the notice of proposed assessments, any owner of property to be assessed for the costs of making the improvements may make written protest against the levy of assessments. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property except as provided in 7-13-2290. The protest must be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day period provided for in this subsection. The secretary shall endorse the date and hour of receipt on the protest.

(4) If the board of directors finds that a protest with respect to the method or methods of assessment described in the resolution is made by the owners of property in the district to be assessed for more than 50% of the cost of improvements, the board of directors may not use the method or methods of

assessment described in the resolution. A protest does not bar the board of directors from adopting subsequent resolutions pursuant to 7-13-2280, using a different method of assessment, and levying the assessments following notice and hearing as provided in 7-13-2281 and this section or, not less than 6 months after the receipt of sufficient protests, instituting proceedings under 7-13-2280, 7-13-2281, and this section proposing the same method of assessment.”

Section 8. Section 7-13-4312, MCA, is amended to read:

“7-13-4312. Authorization to furnish water and sewer services to persons located outside municipality. ~~The city council of any city within Montana~~ *A city council* that owns and operates a municipal water system, ~~and/or a municipal sewer system, or both,~~ to furnish water and sewer services to the inhabitants of ~~such a city~~ as a public utility ~~shall, in addition to all other powers, have power to~~ *may* furnish water from ~~such the~~ water system and sewage services from ~~such the~~ sewer system to the inhabitants or to any person, factory, industry, or producer of farm or other products located outside of the corporate limits of ~~such the~~ city at reasonable rates filed by the city or town council ~~and approved, when otherwise required by statute, by the public service commission.~~ *Such* ~~The city council is further empowered to~~ *may* make collections ~~for furnishing to provide~~ water and sewer services in the same manner as collections are made within the corporate limits.”

Section 9. Section 69-3-101, MCA, is amended to read:

“69-3-101. Meaning of term “public utility”. (1) The term “public utility”, within the meaning of this chapter, ~~shall embrace~~ *includes* every corporation, both public and private, company, individual, association of individuals, *and* their lessees, trustees, or receivers appointed by any court ~~whatsoever, that now or hereafter may own, operate, or control~~ *own, operate, or control* any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

- (a) heat;
- (b) street-railway service;
- (c) light;
- (d) power in any form or by any agency;
- (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, ~~or towns, and villages~~ or elsewhere;
- (f) regulated telecommunications service.

(2) The term “~~public utility~~” does not include:

- (a) privately owned and operated water, sewer, or ~~combination~~ *water and sewer* systems that do not serve the public;
- (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23;
- (c) *except as provided in chapter 7, 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;* or

(~~e~~)*(d)* a person exempted from regulation as a public utility as provided in 69-3-111.”

Section 10. Section 76-3-103, MCA, is amended to read:

“76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "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.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "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.

(4) "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 or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. 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.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "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.

(13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts 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.*

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) “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 or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(16) (a) “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.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner’s intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, “This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument” or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner’s intent to effect a merger of parcels.”

Section 11. Repealer. The following sections of the Montana Code Annotated are repealed:

7-13-4208. Procedure to challenge rates.

7-13-4310. Role of public service commission unaffected.

Section 12. Codification instruction. [Section 1] 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 1].

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Applicability. The provisions of [section 6] apply to a change in salary occurring after [the effective date of this act].

Approved April 18, 2011

CHAPTER NO. 215

[HB 529]

AN ACT REVISING THE FEES CHARGED BY A COUNTY FOR RECORDING THE LOCATION OF AND ANNUAL LABOR ON CERTAIN MINING CLAIMS; AND AMENDING SECTION 7-4-2631, MCA.

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

Section 1. Section 7-4-2631, MCA, is amended to read:

“7-4-2631. Fees of county clerk. (1) Except as provided in 7-4-2632 and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

~~(a)~~ for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, \$6;

~~(b)~~ for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

~~(i)~~ for the first mining claim in the affidavit, \$3; and

~~(ii)~~ for each additional mining claim included in it, 50 cents;

~~(e)(a)~~ for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, \$5;

~~(d)(b)~~ for filing of subdivision and townsite plats, \$5 plus:

~~(i)~~ for each lot up to and including 100, 50 cents;

~~(ii)~~ for each additional lot in excess of 100, 25 cents;

~~(e)(c)~~ for filing certificates of surveys and amendments thereto, \$5 plus 50 cents per tract or lot;

~~(d)(d)~~ for a copy of a record or paper:

~~(i)~~ for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

~~(ii)~~ for each certification with seal affixed, \$2;

~~(g)(e)~~ for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

~~(h)(f)~~ for administering an oath with certificate and seal, no charge;

~~(i)(g)~~ for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

~~(j)(h)~~ for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

~~(k)(i)~~ for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, \$3;

~~(j)(j)~~ for filing a copy of notarial commission and issuing a certificate of official character of such notary public, \$2;

~~(m)(k)~~ for each certified copy of a birth certificate, \$5, and for each certified copy of a death certificate, \$3;

~~(n)(l)~~ for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) *The county clerks shall charge, for the use of their respective counties, the fee as provided in 7-4-2632 for recording and indexing the following:*

(a) each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with the seal affixed; and

(b) each affidavit of annual labor on a mining claim, including a certificate that the instrument has been recorded with the seal affixed.

(2)(3) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis.”

Approved April 18, 2011

CHAPTER NO. 216

[HB 535]

AN ACT REPLACING THE CURRENT MONTANA UNIFORM LIMITED PARTNERSHIP ACT WITH THE MOST RECENT VERSION OF THE UNIFORM LIMITED PARTNERSHIP ACT; AMENDING SECTIONS 35-12-502, 35-12-504, 35-12-505, 35-12-506, 35-12-508, 35-12-509, 35-12-510, 35-12-601, 35-12-602, 35-12-603, 35-12-604, 35-12-605, 35-12-607, 35-12-610, 35-12-701, 35-12-703, 35-12-704, 35-12-705, 35-12-801, 35-12-803, 35-12-901, 35-12-902, 35-12-1001, 35-12-1005, 35-12-1006, 35-12-1103, 35-12-1105, 35-12-1201, 35-12-1202, 35-12-1301, 35-12-1302, 35-12-1307, 35-12-1308, 35-12-1401, 35-12-1402, 35-12-1403, AND 35-12-1404, MCA; AND REPEALING SECTIONS 35-12-503, 35-12-606, 35-12-608, 35-12-609, 35-12-702, 35-12-802, 35-12-804, 35-12-805, 35-12-903, 35-12-904, 35-12-1002, 35-12-1003, 35-12-1004, 35-12-1007, 35-12-1008, 35-12-1101, 35-12-1102, 35-12-1104, 35-12-1203, 35-12-1204, 35-12-1303, 35-12-1304, 35-12-1305, AND 35-12-1306, MCA.

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

Section 1. Section 35-12-502, MCA, is amended to read:

“35-12-502. Construction and application. ~~This~~ *In applying and construing this chapter, consideration must be so construed and applied to effect its general purpose to make uniform given to promote uniformity of the law with respect to limited partnerships its subject matter among states enacting that enact it.”*

Section 2. Section 35-12-504, MCA, is amended to read:

“35-12-504. Definitions. In this chapter, the following definitions apply:

(1) “Certificate of limited partnership” means the certificate ~~referred to in~~ *required by 35-12-601, as that* ~~The term includes the certificate is as amended or restated from time to time.~~

(2) “Contribution”, ~~except in the phrase “right of contribution”,~~ means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services that a partner ~~contributes benefit provided by a person to a limited partnership in order to become a partner in the person’s capacity as a partner.~~

(3) “Event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in ~~35-12-802.~~

(3) “Debtor in bankruptcy” means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) “Designated office” means:

(a) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under Title 35, chapter 7, part 1; and

(b) with respect to a foreign limited partnership, its principal office.

(5) “Distribution” means a transfer of money or other property from a limited partnership to a partner in the partner’s capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) “Foreign limited liability limited partnership” means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to 35-12-803(3).

~~(4)~~(7) “Foreign limited partnership” means a partnership formed under the laws of ~~any state~~ a jurisdiction other than this state and ~~having as partners~~ required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability partnership.

~~(5)~~(8) “General partner” means:

(a) with respect to a limited partnership, a person who ~~has been admitted to a limited partnership as that:~~

(i) becomes a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner under 35-12-801; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under [section 96(1) or (2)]; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(9) “Limited liability limited partnership”, except in the phrase “foreign limited liability limited partnership”, means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

~~(6)~~(10) “Limited partner” means:

(a) with respect to a limited partnership, a person who ~~has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement that:~~

(i) becomes a limited partner under 35-12-701; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under [section 96(1) or (2)]; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

~~(7)~~(11) “Limited partnership”, except in the phrases “foreign limited partnership” and “foreign limited liability limited partnership”, and “domestic limited partnership” mean a partnership formed by two or more persons under the laws of this state and means an entity having one or more general partners and one or more limited partners that is formed under this chapter by two or more persons or becomes subject to this chapter under [sections 82 through 94] or [section 96(1) or (2)]. The term includes the agreement as amended.

(8)(12) "Partner" means ~~any~~ a limited partner or general partner.

(9)(13) "Partnership agreement" means the *partners'* agreement, ~~written or, to the extent not prohibited by law, whether oral, implied, in a record, or both in any combination, of the partners as to the affairs of a~~ concerning the limited partnership and the conduct of its business. *The term includes the agreement as amended.*

(10) "Partnership interest" has the meaning specified in ~~35-12-1101~~.

(11)(14) "Person" means ~~a natural person~~ *an individual, corporation, business trust, estate trust, partnership, limited partnership (domestic or foreign), trust, estate liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, or public corporation, or any other legal or commercial entity.*

(15) "Person dissociated as a general partner" means *a person dissociated as a general partner of a limited partnership.*

(16) "Principal office" means *the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.*

(17) "Record" means *information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

(18) "Required information" means *the information that a limited partnership is required to maintain under 35-12-508.*

(19) "Sign" means:

(a) *to execute or adopt a tangible symbol with the present intent to authenticate a record; or*

(b) *to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.*

(12)(20) "State" means ~~a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States.~~

(21) "Transfer" includes *an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.*

(22) "Transferable interest" means *a partner's right to receive distributions.*

(23) "Transferee" means *a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner."*

Section 3. Knowledge and notice. (1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

(a) knows of it;

(b) has received a notification of it;

(c) has reason to know it exists from all of the facts known to the person at the time in question; or

(d) has notice of it under subsection (3) or (4).

(3) A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (4), the certificate is not notice of any other fact.

(4) A person has notice of:

(a) another person's dissociation as a general partner 90 days after the effective date of an amendment to the certificate of limited partnership that states that the other person has dissociated or 90 days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;

(b) a limited partnership's dissolution 90 days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;

(c) a limited partnership's termination 90 days after the effective date of a statement of termination;

(d) a limited partnership's conversion under [sections 82 through 94] 90 days after the effective date of the articles of conversion; or

(e) a merger under [sections 82 through 94] 90 days after the effective date of the articles of merger.

(5) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(6) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(7) Except as otherwise provided in subsection (8), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person, other than an individual, exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(8) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

Section 4. Section 35-12-505, MCA, is amended to read:

"35-12-505. Name. (1) *The name of a limited partnership may contain the name of any partner.*

~~(1)~~(2) The name of each limited partnership as set forth in its certificate of that is not a limited liability partnership:

~~(a)~~ must contain the words phrase "limited partnership"; or the abbreviation "l.p."; or the designation "lp";

~~(b)~~ and may not contain the name of a limited partner unless:

(i) it is also the name of a general partner; or

(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) ~~may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited partnership is other than a limited partnership; and phrase "limited liability limited partnership" or the abbreviation "l.l.l.p." or "lllp".~~

(3) *The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "l.l.l.p." or "lllp" and may not contain the abbreviation "l.p." or "lp".*

~~(d)~~(4) *Unless authorized by subsection (5), the name of a limited partnership must be distinguishable on in the record records of the secretary of state from:*

(a) ~~the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership each person other than an individual incorporated, organized, or authorized to transact business in this state; and~~

(b) ~~each name reserved under Title 30, chapter 13, part 2, or 35-12-506.~~

(2) ~~The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308.~~

(5) *A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection (4). The secretary of state shall authorize use of the name applied for if, as to each conflicting name:*

(a) *the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection (4) and that is distinguishable in the records of the secretary of state from the name applied for;*

(b) *the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or*

(c) *the applicant delivers to the secretary of state proof satisfactory to the secretary of state that the present user, registrant, or owner of the conflicting name:*

(i) *has merged into the applicant;*

(ii) *has been converted into the applicant; or*

(iii) *has transferred substantially all of its assets, including the conflicting name, to the applicant.*

(6) *Subject to [section 73], this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority."*

Section 5. Section 35-12-506, MCA, is amended to read:

"35-12-506. Reservation of name. (1) The exclusive right to the use of a name that complies with 35-12-505 may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt ~~that~~ the name;

(b) ~~any domestic a limited partnership or any a foreign limited partnership registered authorized to transact business in this state that, in either case, intends intending to adopt that the name;~~

(c) ~~any~~ a foreign limited partnership intending to register ~~obtain a certificate of authority to transact business~~ in this state and to adopt ~~that~~ the name; and

(d) ~~any~~ a person intending to organize a foreign limited partnership and intending to have it registered ~~obtain a certificate of authority to transact business~~ in this state and to adopt ~~that~~ the name;

(e) a foreign limited partnership formed under the name; or

(f) a foreign limited partnership formed under a name that does not comply with 35-12-505(2) or (3), but the name reserved under this subsection (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with 35-12-505(2) and (3).

~~(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.~~

(2) A person may apply to reserve a name under subsection (1) by delivering to the secretary of state for filing an application that states the name to be reserved and the subsection of subsection (1) that applies. If the secretary of state finds that the name is available for use by the applicant, the secretary of state shall file a statement of name reservation and thereby reserve the name for the exclusive use of the applicant for a 120 days.

(3) An applicant that has reserved a name pursuant to subsection (2) may reserve the same name for additional 120-day periods. A person having a current reservation for a name may not apply for another 120-day period for the same name until 90 days have elapsed in the current reservation.

(4) A person that has reserved a name under this section may deliver to the secretary of state for filing a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the subsection of subsection (1) that applies to the other person. Subject to [section 20(3)], the transfer is effective when the secretary of state files the notice of transfer."

Section 6. Section 35-12-508, MCA, is amended to read:

"35-12-508. Records to be kept Required information. (1) Each A limited partnership shall ~~keep at the principal~~ maintain at its principal office the following information:

~~(a)~~(1) a current list of showing the full name and last-known business street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

~~(b)~~(2) a copy of the initial certificate of limited partnership and all certificates of amendment amendments to and restatements of the certificate, together with executed signed copies of any powers of attorney pursuant to under which any certificate, amendment, or restatement has been executed signed;

(3) a copy of any filed articles of conversion or merger;

~~(e)(4) copies a copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;~~

~~(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years; and~~

~~(5) a copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;~~

~~(6) a copy of any financial statement of the limited partnership for the 3 most recent years;~~

~~(7) a copy of any record made by the limited partnership during the past 3 years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and~~

~~(e)(8) unless contained in a written partnership agreement made in a record, a writing setting out record stating:~~

~~(i)(a) the amount of cash and a description and statement of the agreed value of the other property or services benefits contributed and agreed to be contributed by each partner and that each partner has agreed to contribute;~~

~~(ii)(b) the times at which or the events on the happening of which any additional contributions agreed to be made by each partner are to be made;~~

~~(iii)(c) any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and~~

~~(iv)(d) any events, upon the happening of which, the limited partnership is to be dissolved and its affairs activities wound up.~~

~~(2) Records kept under this section must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours."~~

Section 7. Section 35-12-509, MCA, is amended to read:

"35-12-509. Nature, purpose, and duration of business entity. A limited partnership may carry on any business that a partnership without limited is an entity distinct from its partners' partners may carry on. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(2) A limited partnership may be organized under this chapter for any lawful purpose.

(3) A limited partnership has a perpetual duration."

Section 8. Powers. A limited partnership has the power to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

Section 9. Governing law. The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

Section 10. Supplemental principles of law — rate of interest. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in 31-1-106.

Section 11. Effect of partnership agreement — nonwaivable provisions. (1) Except as otherwise provided in subsection (2), the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary a limited partnership's power under [section 8] to sue, be sued, and defend in its own name;

(b) vary the law applicable to a limited partnership under [section 9];

(c) vary the requirements of 35-12-604;

(d) vary the information required under 35-12-508 or unreasonably restrict the right to information under 35-12-705 or [section 38], but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(e) eliminate the duty of loyalty under [section 39], but the partnership agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty if not manifestly unreasonable; and

(ii) specify the number or percentage of partners that may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty;

(f) unreasonably reduce the duty of care under [section 39(3)];

(g) eliminate the obligation of good faith and fair dealing under [sections 31(2) and 39(4)], but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(h) vary the power of a person to dissociate as a general partner under [section 52(1)] except to require that the notice under [section 51(1)] be in a record;

(i) vary the power of a court to decree dissolution in the circumstances specified in 35-12-1202;

(j) vary the requirement to wind up the partnership's business as specified in [section 62];

(k) unreasonably restrict the right to maintain an action;

(l) restrict the right of a partner under [section 91(1)] to approve a conversion or merger or the right of a general partner under [section 91(2)] to consent to an amendment to the certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership; or

(m) restrict rights under this chapter of a person other than a partner or a transferee.

Section 12. Section 35-12-510, MCA, is amended to read:

“35-12-510. Business transactions of partner with the partnership. Except as otherwise provided in the partnership agreement, a A partner may

lend money to and transact other business with the limited partnership and, subject to other applicable provisions of law, has the same rights and obligations with respect thereto to the loan or other transaction as a person who that is not a partner.”

Section 13. Dual capacity. A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

Section 14. Consent and proxies of partners. Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner’s attorney-in-fact.

Section 15. Section 35-12-601, MCA, is amended to read:

“35-12-601. Certificate Formation of limited partnership — certificate of limited partnership. (1) In order to form for a limited partnership to be formed, a certificate of limited partnership must be executed, must be filed in the office of delivered to the secretary of state, for filing. and The certificate must set forth state:

- (a) the name of the limited partnership, which must comply with 35-12-505;
- (b) the information required by 35-7-105(1);
- (c) the name and the complete business mailing street address of each general partner; and
- (d) whether the limited partnership is a limited liability limited partnership; and
- (d)(e) any other matters the general partners, in their sole discretion, determine to include additional information required by [sections 82 through 94].

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section.

(2) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in [section 11(2)] in a manner inconsistent with that section.

(3) If there has been substantial compliance with subsection (1), subject to [section 20(3)] a limited partnership is formed when the secretary of state files the certificate of limited partnership.

(4) Subject to subsection (2), if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

- (a) the partnership agreement prevails as to partners and transferees; and
- (b) the filed certificate of limited partnership, statement of dissociation, termination, or change, or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.”

Section 16. Section 35-12-602, MCA, is amended to read:

“35-12-602. Amendments to or restatement of certificate — restated certificates. (1) A In order to amend its certificate of limited partnership, is

amended by filing a certificate of amendment in the office of a limited partnership shall deliver to the secretary of state. The certificate must set forth for filing an amendment or, pursuant to [sections 82 through 94], articles of merger stating:

- (a) the name of the limited partnership;
- (b) the date of filing of the *its* initial certificate; and
- (c) the amendments changes the amendment makes to the certificate as most recently amended or restated.

(2) An amendment to a certificate of A limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:

- (a) the admission of a new general partner;
- (b) the withdrawal of dissociation of a person as a general partner; or
- (c) the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner appointment of a person to wind up the limited partnership's activities under [section 62(3) or (4)].

(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement in the certificate was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect.

(3) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

- (a) cause the certificate to be amended; or
- (b) if appropriate, deliver to the secretary of state for filing a statement of change pursuant to 35-7-110 or a statement of correction pursuant to [section 21].

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine as determined by the limited partnership.

(5) A person is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) if the amendment is filed within the 30-day period specified in subsection (2).

(6)(5) A restated certificate of limited partnership may be executed and filed delivered to the secretary of state for filing in the same manner as a certificate of an amendment.

(6) Subject to [section 20(3)], an amendment or restated certificate is effective when filed by the secretary of state."

Section 17. Section 35-12-603, MCA, is amended to read:

"35-12-603. Cancellation of certificate Statement of cancellation. A certificate of dissolved limited partnership must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth that has completed winding up may deliver to the secretary of state for filing a statement of cancellation that states:

- (1) the name of the limited partnership;
- (2) the date of filing of the *its* certificate of limited partnership; and

(3) the reason for filing the certificate of cancellation;

~~(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and~~

~~(5)(4) any other information determined by the general partners filing the certificate may determine statement or by a person appointed to [section 62(3) or (4)].~~

(5) *Cancellation is effective upon filing with the secretary of state.*”

Section 18. Section 35-12-604, MCA, is amended to read:

~~“35-12-604. Execution of certificates Signing of records.~~ (1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of record delivered to the secretary of state for filing pursuant to this chapter must be executed signed in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(b) *An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.*

~~(b)(c) Each certificate of An amendment designating as general partner a person admitted under 35-12-1201(3)(b) following the dissociation of a limited partnership’s last general partner must be signed by at least one general partner and by each other general partner who is designated in the certificate as a new general partner that person.~~

~~(e) Each certificate of cancellation must be signed by all general partners.~~

(d) *An amendment required by [section 62(3)] following the appointment of a person to wind up the dissolved limited partnership’s activities must be signed by that person.*

(e) *Any other amendment must be signed by:*

(i) *at least one general partner listed in the certificate;*

(ii) *every other person designated in the amendment as a new general partner; and*

(iii) *each person that the amendment indicates has dissociated as a general partner unless:*

(A) *the person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or*

(B) *the person has previously delivered to the secretary of state for filing a statement of dissociation.*

(f) *A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and to the extent the restated certificate effects a change under any other subsection of this subsection (1), the certificate must be signed in a manner that satisfies that subsection.*

(g) *A statement of cancellation must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to [section 62(3) or (4)] to wind up the dissolved limited partnership’s activities.*

(h) *Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.*

(i) *Articles of merger must be signed as provided in [section 89(1)].*

(j) Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate.

(k) A statement by a person pursuant to [section 53(1)(d)] stating that the person has dissociated as a general partner must be signed by that person.

(l) A statement of withdrawal by a person pursuant to 35-12-704 must be signed by that person.

(m) A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.

(n) Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission any record filed pursuant to this chapter.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated in the certificate are true."

Section 19. Section 35-12-605, MCA, is amended to read:

"35-12-605. Execution by Signing and filing pursuant to judicial act order. (1) If the persons a person required by 35-12-604 this chapter to execute any certificate fail or refuse to sign a record or deliver a record to the secretary of state for filing does not do so, any other person who is adversely affected by the failure or refusal that is aggrieved may petition the district court to direct the execution of the certificate order:

(a) the person to sign the record;

(b) the person to deliver the record to the secretary of state for filing; or

(c) the secretary of state to file the record unsigned. If the court finds that it is proper for the certificate to be executed and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

(2) If the person aggrieved under subsection (1) is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (1) may seek the remedies provided in subsection (1) in the same action in combination or in the alternative.

(3) A record filed unsigned pursuant to this section is effective without being signed."

Section 20. Delivery to and filing of records by secretary of state — effective time and date. (1) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, if all filing fees have been paid, the secretary of state shall file the record and upon request and payment of a fee:

(a) for a statement of dissociation, send:

(i) a copy of the filed statement to the person that the statement indicates has dissociated as a general partner; and

(ii) a copy of the filed statement to the limited partnership;

(b) for a statement of withdrawal, send:

(i) a copy of the filed statement to the person on whose behalf the record was filed; and

(ii) if the statement refers to an existing limited partnership, a copy of the filed statement to the limited partnership; and

(c) for all other records, send a copy of the filed record to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in 35-7-111 and [section 21], a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

(a) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(b) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(d) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

Section 21. Correcting filed record. (1) A limited partnership or foreign limited partnership may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the secretary of state and filed by the secretary of state if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and must:

(a) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(b) specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(c) correct the incorrect information or defective signature.

(3) When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(a) for the purposes of [section 3(3) and (4)]; and

(b) as to persons relying on the uncorrected record and adversely affected by the correction.

Section 22. Section 35-12-607, MCA, is amended to read:

“35-12-607. Liability for false statement in certificate. (1) If any certificate of limited partnership or certificate of amendment, restatement, or cancellation a record delivered to the secretary of state for filing under this

chapter and filed by the secretary of state contains a false statement information, any person who that suffers loss by reliance on the statement information may recover damages for the loss from:

~~(1)(a) any a person actually executing the certificate that signed the record or causing caused another to execute sign it on the person's behalf who and knew and any general partner who knew or should have known the statement the information to be false at the time the certificate was executed record was signed; and~~

~~(2)(b) any a general partner who after the execution of the certificate knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a that has notice that the information was false when the record was filed or has become false because of changed circumstances if the general partner has notice for a reasonably sufficient time before the statement was information is relied upon to have reasonably enabled that enable the general partner to cancel, restate, or amend the certificate or to file a petition for its cancellation, restatement, or amendment under 35-12-605 effect an amendment under 35-12-602, file a petition pursuant to 35-12-605, or deliver to the secretary of state for filing a statement of change pursuant to 35-7-108 or a statement of correction pursuant to [section 21].~~

~~(2) Signing a record authorized or required to be filed under this chapter constitutes an affirmation under the penalties of perjury that the facts stated in the record are true."~~

Section 23. Certificate of fact. (1) The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of fact for a limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of limited partnership and whether a statement of cancellation has been filed. A certificate of fact must state:

- (a) the limited partnership's name;
- (b) that it was duly formed under the laws of this state and the date of formation;
- (c) whether the secretary of state has administratively dissolved the limited partnership;
- (d) whether the limited partnership's certificate of limited partnership has been amended to state that the limited partnership is dissolved;
- (e) whether a statement of cancellation been filed by the secretary of state; and
- (f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(2) The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of fact for a foreign limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, whether the certificate of authority was revoked, and whether a notice of cancellation was filed. A certificate of fact must state:

- (a) the foreign limited partnership's name and any alternate name adopted under [section 73(1)] for use in this state;
- (b) that it is authorized to transact business in this state;
- (c) whether the secretary of state has revoked its certificate of authority and whether a notice of cancellation has been filed; and

(d) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of fact or authorization issued by the secretary of state may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

Section 24. Section 35-12-610, MCA, is amended to read:

“35-12-610. Term and renewal of certification. (1) Certification of a *limited partnership or a certificate of authority of a foreign limited partnership* is effective for a term of 5 years from the date of filing or renewal of certification or the date of issuance of a certificate. Upon application for renewal of certification on forms furnished by the secretary of state, the certification may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary of state shall notify the listed general partner or partners or specified agent of the pending expiration by addressing a notice to the last-known address of the general partner or partners or specified agent.

(3) If the general partner or partners or specified agent ~~fail~~ fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the certification, the secretary of state shall cancel the certification.

(4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in 35-12-610 through 35-12-613.

(5) *A certificate of authority in force on July 1, 2011, expires 5 years from the date it was filed or on July 1, 2012, whichever is later, if renewal of certification of authority is not affected as provided in 35-12-610 or [section 25].”*

Section 25. Application for renewal of foreign limited partnership certificate of authority — requirements for appointed registered agent. (1) The application for renewal of a certificate of authority of a foreign limited partnership must be executed by the general partners and delivered to the secretary of state. (2) The application must include the following information:

(a) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(b) the information required under 35-7-105; and

(c) the name and business mailing address of each general partner.

Section 26. Section 35-12-701, MCA, is amended to read:

“35-12-701. Admission of Becoming limited partners partner. (1) A person becomes a limited partner:

~~(a)(1) at the time the limited partnership is formed; or~~

~~(b) at any later time specified as provided in the partnership agreement; for becoming a limited partner.~~

~~(2) After the filing of a limited partnership’s original certificate of limited partnership, a person may be admitted as an additional limited partner:~~

~~(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon~~

(2) *as the result of a conversion or merger under [sections 82 through 94]; or*

(3) *with the written consent of all the partners; and*

(b) *in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."*

Section 27. No right or power as limited partner to bind limited partnership. A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

Section 28. Section 35-12-703, MCA, is amended to read:

"35-12-703. Liability to third parties *No liability as limited partner for limited partnership obligations.* (1) *Except as provided in subsection (4), a An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for the obligations an obligation of a limited partnership unless, in addition to the exercise of the rights and powers as solely by reason of being a limited partner, the limited partner participates in the control of the business. However, even if the limited partner participates in the management and control of the limited partnership business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.*

(2) *A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:*

(a) *being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;*

(b) *consulting with and advising a general partner with respect to the business of the limited partnership;*

(c) *acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;*

(d) *taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;*

(e) *requesting or attending a meeting of partners;*

(f) *proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:*

(i) *the dissolution and winding up of the limited partnership;*

(ii) *the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;*

(iii) *the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;*

(iv) *a change in the nature of the business;*

(v) *the admission or removal of a general partner;*

(vi) *the admission or removal of a limited partner;*

(vii) *a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;*

(viii) *an amendment to the partnership agreement or certificates of limited partnership; or*

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to 35-12-1203; or

(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).

~~(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.~~

~~(4) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by 35-12-505(1)(b)(i) and (1)(b)(ii), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner."~~

Section 29. Section 35-12-704, MCA, is amended to read:

"35-12-704. Person erroneously believing *self to be limited partner status.* (1) Except as *otherwise* provided in subsection (2), a person ~~who that~~ makes a contribution to an investment in a business enterprise and erroneously ~~and but~~ in good faith believes that the person has become a limited partner in the enterprise ~~is not a general partner in the enterprise and is not bound by its~~ liable for the obligations by reason of making the contribution investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner if, on ascertaining the mistake, the person:

(a) causes an appropriate certificate of limited partnership, ~~or a certificate of~~ amendment, or statement of correction to be executed signed and filed delivered to the secretary of state for filing; or

(b) withdraws from future equity participation as an owner in the enterprise by executing and filing in the office of delivering to the secretary of state a certificate declaring for filing a statement of withdrawal under this section.

~~(2) Any A person who that~~ makes a contribution of the kind an investment described in subsection (1) is liable to the same extent as a general partner to any third party ~~who transacts business that enters into a transaction with the~~ enterprise, believing in good faith that the person is a general partner, before the person withdraws and an appropriate the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of conversion if any, is filed to show that the person is not a general partner.

~~(3) but in each case only if the third party actually believed~~ If a person makes a diligent effort in good faith that the person was a general partner at the time of the transaction to comply with subsection (1)(a) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection (1)(b) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise."

Section 30. Section 35-12-705, MCA, is amended to read:

"35-12-705. Right of limited partner and former limited partner to information. (1) ~~Each~~ On 10 days' demand, made in a record received by the limited partnership, a limited partner has the right to:

~~(1) may inspect and copy any of the partnership records required by 35-12-508 to be maintained, and required information during regular business~~

hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(2) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the general partners ~~from time to time upon reasonable demand:~~

~~(a) limited partnership and inspect and copy true and full information regarding the state of the business activities and financial condition of the limited partnership;~~

~~(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and~~

~~(c) any and other information regarding the affairs activities of the limited partnership as is just and reasonable; if:~~

~~(a) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;~~

~~(b) the limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and~~

~~(c) the information sought is directly connected to the limited partner's purpose.~~

(3) Within 10 days after receiving a demand pursuant to subsection (2), the limited partnership in a record shall inform the limited partner that made the demand:

(a) the information that the limited partnership will provide in response to the demand;

(b) when and where the limited partnership will provide the information; and

(c) if the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(4) Subject to subsection (6), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office if:

(a) the information pertains to the period during which the person was a limited partner;

(b) the person seeks the information in good faith; and

(c) the person meets the requirements of subsection (2).

(5) The limited partnership shall respond to a demand made pursuant to subsection (4) in the same manner as provided in subsection (3).

(6) If a limited partner dies, 35-12-1105 applies.

(7) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(8) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(9) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(10) *A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (7) or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.*

(11) *The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.*”

Section 31. Limited duties of limited partners. (1) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(2) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(3) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

Section 32. Section 35-12-801, MCA, is amended to read:

“35-12-801. Admission Becoming partner. ~~After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted~~ *A person becomes a general partner:*

(1) ~~as provided in writing in the partnership agreement; or, if the partnership agreement does not provide in writing for the admission of additional general partners,~~

(2) *under 35-12-1201(3)(b) following the dissociation of a limited partnership's last general partner;*

(3) *as the result of a conversion or merger under [sections 82 through 94]; or*

(4) *with the written consent of all the partners.”*

Section 33. General partner as agent of limited partnership. (1) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under [section 3(4)] that the general partner lacked authority.

(2) An act of a general partner that is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

Section 34. Limited partnership liable for general partner's actionable conduct. (1) A limited partnership is liable for loss or injury caused to a person or for a penalty incurred as a result of a wrongful act or omission or other actionable conduct of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(2) If in the course of the limited partnership's activities or while acting with authority of the limited partnership a general partner receives or causes the

limited partnership to receive money or property of a person not a partner and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

Section 35. Section 35-12-803, MCA, is amended to read:

“35-12-803. General powers and partner’s liabilities. (1) Except as otherwise provided in this chapter and in the partnership agreement subsections (2) and (3), ~~a all general partner partners are liable jointly and severally for all obligations of a the limited partnership has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners unless otherwise agreed by the claimant or provided by law.~~

(2) ~~Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, A person that becomes a general partner of a an existing limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.~~

(3) *An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under [section 37(2)(b)].”*

Section 36. Actions by and against partnership and partners. (1) To the extent not inconsistent with 35-12-803, a general partner may be joined in an action against the limited partnership or named in a separate action.

(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner’s assets unless there is also a judgment against the general partner.

(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership unless the partner is personally liable for the claim under 35-12-803 and:

(a) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the limited partnership is a debtor in bankruptcy;

(c) the general partner has agreed that the creditor need not exhaust limited partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court’s equitable powers; or

(e) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

Section 37. Management rights of general partner. (1) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(2) The consent of each partner is necessary to:

(a) amend the partnership agreement;

(b) amend the certificate of limited partnership to add or, subject to [section 91], delete a statement that the limited partnership is a limited liability limited partnership; and

(c) sell, lease, exchange, or otherwise dispose of all or substantially all of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(3) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(4) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(5) A payment or advance made by a general partner that gives rise to an obligation of the limited partnership under subsection (3) or (4) constitutes a loan to the limited partnership that accrues interest from the date of the payment or advance.

(6) A general partner is not entitled to remuneration for services performed for the partnership.

Section 38. Right of general partner and former general partner to information. (1) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(a) in the limited partnership's principal office, required information; and

(b) at a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(2) Each general partner and the limited partnership shall furnish to a general partner:

(a) without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

(b) on demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(3) Subject to subsection (5), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (1) at the location specified in subsection (1) if:

(a) the information or record pertains to the period during which the person was a general partner;

(b) the person seeks the information or record in good faith; and

(c) the person satisfies the requirements imposed on a limited partner by 35-12-705(2).

(4) The limited partnership shall respond to a demand made pursuant to subsection (3) in the same manner as provided in 35-12-705(3).

(5) If a general partner dies, 35-12-1105 applies.

(6) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(7) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (6) or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(9) The rights under this section do not extend to a person as transferee, but the rights under subsection (3) of a person dissociated as a general may be exercised by the legal representative of an individual who dissociated as a general partner under [section 51(7)(b) or (7)(c)].

Section 39. General standards of general partner's conduct. (1) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (2) and (3).

(2) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

(a) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(b) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and

(c) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(3) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

Section 40. Section 35-12-901, MCA, is amended to read:

“35-12-901. Form of contributions. ~~The A contribution of a partner may be in cash, consist of tangible or intangible property, or services rendered or a promissory note or other obligation benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, or to perform services and contracts for services to be performed.”~~

Section 41. Section 35-12-902, MCA, is amended to read:

“35-12-902. Liability for contributions. (1) ~~A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.~~

(2) ~~Except as otherwise provided in the partnership agreement, a partner is liable to the limited partnership for any enforceable promise to contribute cash or property or to perform services regardless of whether the partner is personally unable to perform because of A partner’s obligation to contribute money or other property or other benefit or to perform services for a limited partnership is not excused by the partner’s disability, death, or any other reason inability to perform personally.~~

(2) If a partner does not make ~~the required a promised nonmonetary contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash money equal to that portion of the value, as stated in the partnership records required to be kept pursuant to 35-12-508 required information, of the stated contribution that has not been made.~~

(3) ~~Unless otherwise provided in the partnership agreement, the The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all of the partners. Notwithstanding a compromise so authorized, a A creditor of a limited partnership who that extends credit or otherwise acts in reliance on that an obligation described in subsection (1), after the partner signs a writing that, in either case, reflects the obligation and before the amendment or cancellation to reflect the without notice of any compromise under this subsection, may enforce the precompromise original obligation.”~~

Section 42. Sharing of distributions. A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

Section 43. Section 35-12-1001, MCA, is amended to read:

“35-12-1001. Interim distributions. ~~Except as otherwise provided in 35-12-1001 through 35-12-1008, a A partner is entitled to receive distributions from a limited partnership before the partner’s withdrawal from the limited partnership and does not have a right to any distribution before the dissolution and winding up to the extent and at the times or on the happening of the events specified in the partnership agreement of the limited partnership unless the limited partnership decides to make an interim distribution.”~~

Section 44. No distribution on account of dissociation. A person does not have a right to receive a distribution on account of dissociation.

Section 45. Section 35-12-1005, MCA, is amended to read:

“35-12-1005. Distributions in kind. ~~Except as provided in writing in the partnership agreement, a A partner, regardless of the nature of the partner’s contribution, has no does not have a right to demand and or receive any~~

distribution from a limited partnership in any form other than cash. ~~Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any~~ *Subject to [section 68(2)], a limited partnership may distribute an asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the each partner exceeds receives a percentage of that the asset that is equal to the percentage in which the partner shares in partner's share of distributions from the limited partnership.*"

Section 46. Section 35-12-1006, MCA, is amended to read:

"35-12-1006. Right to distributions. ~~At the time~~ *When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.*"

Section 47. Limitations on distribution. (1) A limited partnership may not make a distribution in violation of the partnership agreement.

(2) A limited partnership may not make a distribution if after the distribution:

(a) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(b) the limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

(3) A limited partnership may base a determination that a distribution is not prohibited under subsection (2) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(4) Except as otherwise provided in subsection (7), the effect of a distribution under subsection (2) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt is incurred by the limited partnership; and

(b) in all other cases, as of the date:

(i) the distribution is authorized if the payment occurs within 120 days after that date; or

(ii) the payment is made if payment occurs more than 120 days after the distribution is authorized.

(5) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(6) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (2) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(7) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

Section 48. Liability for improper distributions. (1) A general partner that consents to a distribution made in violation of [section 47] is personally liable to the limited partnership for the amount of the distribution that exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with [section 39].

(2) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of [section 47] is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under [section 47].

(3) A general partner against which an action is commenced under subsection (1) may:

(a) implead in the action any other person that is liable under subsection (1) and compel contribution from the person; and

(b) implead in the action any person that received a distribution in violation of subsection (2) and compel contribution from the person in the amount the person received in violation of subsection (2).

(4) An action under this section is barred if it is not commenced within 2 years after the distribution.

Section 49. Dissociation as limited partner. (1) Except as provided in subsection (2), a person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(2) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(a) the limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(b) an event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(c) the person's expulsion as a limited partner pursuant to the partnership agreement;

(d) the person's expulsion as a limited partner by the unanimous consent of the other partners if:

(i) it is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(ii) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(iii) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(e) on application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(i) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(ii) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under [section 31(2)]; or

(iii) the person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities with the person as a limited partner;

(f) in the case of a person who is an individual, the person's death;

(g) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(h) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(i) termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(j) the limited partnership's participation in a conversion or merger under [sections 82 through 94] if the limited partnership:

(i) is not the converted or surviving entity; or

(ii) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

Section 50. Effect of dissociation as limited partner. (1) Upon a person's dissociation as a limited partner:

(a) subject to 35-12-1105, the person does not have further rights as a limited partner;

(b) the person's obligation of good faith and fair dealing as a limited partner under [section 31(2)] continues only as to matters arising and events occurring before the dissociation; and

(c) subject to 35-12-1105 and [sections 82 through 94], any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(2) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a limited partner.

Section 51. Dissociation as general partner. A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(1) the limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) an event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

(3) the person's expulsion as a general partner pursuant to the partnership agreement;

(4) the person's expulsion as a general partner by the unanimous consent of the other partners if:

(a) it is unlawful to carry on the limited partnership's activities with the person as a general partner;

(b) there has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(c) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(a) the person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(b) the person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under [section 39]; or

(c) the person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) the person's:

(a) becoming a debtor in bankruptcy;

(b) execution of an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(d) failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a person who is an individual:

(a) the person's death;

(b) the appointment of a guardian or general conservator for the person; or

(c) a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) in the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's

entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(11) the limited partnership's participation in a conversion or merger under [sections 82 through 94] if the limited partnership:

(a) is not the converted or surviving entity; or

(b) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

Section 52. Person's power to dissociate as general partner — wrongful dissociation. (1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to [section 51(1)].

(2) A person's dissociation as a general partner is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) it occurs before the termination of the limited partnership and:

(i) the person withdraws as a general partner by express will;

(ii) the person is expelled as a general partner by judicial determination under [section 51(5)];

(iii) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or

(iv) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to [section 77], to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

Section 53. Effect of dissociation as general partner. (1) Upon a person's dissociation as a general partner:

(a) the person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;

(b) the person's duty of loyalty as a general partner under [section 39(2)(c)] terminates;

(c) the person's duty of loyalty as a general partner under [section 39(2)(a) and (2)(b)] and duty of care under [section 39(3)] continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(d) the person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership that states that the person has dissociated; and

(e) subject to 35-12-1105 and [sections 82 through 94], any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(2) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a general partner.

Section 54. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner. (1) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under [sections 8 through 94], or merged out of existence under [sections 82 through 94], the limited partnership is bound by an act of the person only if:

(a) the act would have bound the limited partnership under [section 33] before the dissociation; and

(b) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(2) If a limited partnership is bound under subsection (1), the person dissociated as a general partner that caused the limited partnership to be bound is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (1); and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Section 55. Liability to other persons of person dissociated as general partner. (1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (2) and (3), the person is not liable for a limited partnership's obligation incurred after dissociation.

(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under 35-12-803 on an obligation incurred by the limited partnership under [section 63].

(3) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

(a) a general partner would be liable on the transaction; and

(b) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(5) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

Section 56. Partner's transferable interest. The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property.

Section 57. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest:

- (a) is permissible;
 - (b) does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and
 - (c) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (3), or to inspect or copy the required information or the limited partnership's other records.
- (2) A transferee has a right to receive, in accordance with the transfer:
- (a) distributions to which the transferor would otherwise be entitled; and
 - (b) upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.
- (3) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.
- (4) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.
- (5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.
- (6) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.
- (7) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under 35-12-902 and [section 48]. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

Section 58. Section 35-12-1103, MCA, is amended to read:

"35-12-1103. Rights of creditors of partner or transferee. (1) On due application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the ~~partnership~~ transferable interest of the ~~partner~~ judgment debtor with payment of the unsatisfied amount of the judgment debt, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the ~~partnership interest~~ a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries that the judgment debtor might have made or that the circumstances of the case may require to give effect to the charging order.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

- (3) At any time before foreclosure, an interest charged may be redeemed:
- (a) by the judgment debtor;
 - (b) with property other than limited partnership property, by one or more of the other partners; or

(c) *with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.*

(4) This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable partnership interest.

(5) *This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest."*

Section 59. Section 35-12-1105, MCA, is amended to read:

~~"35-12-1105. Power of estate of deceased or incompetent partner.~~ If a partner ~~who is a natural person dies, or a court of competent jurisdiction adjudges that partner to be incompetent to manage the partner's person or property,~~ the *deceased* partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights of a transferee as provided in [section 57] and, for the purpose of settling the partner's estate, or administering the partner's property, including any power the partner had to give an assignee the right to become *may exercise the rights of a current limited partner under 35-12-705.* If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner."

Section 60. Section 35-12-1201, MCA, is amended to read:

~~"35-12-1201. Nonjudicial dissolution.~~ *A Except as otherwise provided in 35-12-1201, a limited partnership is dissolved and its affairs must be wound up on only upon the occurrence of the first of any the following:*

(1) ~~at the time or on the happening of the events an event~~ specified in writing in the partnership agreement;

(2) ~~on the unanimous written consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;~~

(3) ~~on the happening of an event of withdrawal of after the dissociation of a person as a general partner:~~

(a) ~~unless at the time there is if the limited partnership has at least one other remaining general partner, and the written provisions of the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and the remaining general partner does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, the consent to dissolve the limited partnership given within 90 days after the withdrawal, all dissociation by partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired owning a majority of the rights to receive distributions as partners at the time the consent is to be effective;~~
or

(b) *if the limited partnership does not have a remaining general partner, the filing of the dissolution with the secretary of state unless before the end of the period:*

(i) *consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and*

(ii) *at least one person is admitted as a general partner in accordance with the consent;*

(4) ~~on entry of a decree of judicial dissolution in accordance with 35-12-1202 the passage of 90 days after the dissociation of the limited partnership's last limited partner unless before the end of the period the limited partnership admits at least one limited partner; or~~

(5) *the signing and filing of a declaration of dissolution by the secretary of state."*

Section 61. Section 35-12-1202, MCA, is amended to read:

~~"35-12-1202. Dissolution by decree of court~~ **Judicial resolution.** On application by ~~or for~~ a partner, the district court may ~~decree a order~~ dissolution of a limited partnership ~~whenever~~ *whenever if it is not reasonably practicable to carry on the business activities of the limited partnership in conformity with the partnership agreement."*

Section 62. Winding up. (1) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(2) In winding up its activities, the limited partnership:

(a) may amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of cancellation as provided in 35-

12-603, and perform other necessary acts; and

(b) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(a) has the powers of a general partner under [section 63]; and

(b) shall promptly amend the certificate of limited partnership to state:

(i) that the limited partnership does not have a general partner;

(ii) the name of the person that has been appointed to wind up the limited partnership; and

(iii) the business mailing address of the person.

(4) On the application of any partner, the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities if:

(a) a limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3); or

(b) the applicant establishes other good cause.

Section 63. Power of general partner and person dissociated as general partner to bind partnership after dissolution. (1) A limited partnership is bound by a general partner's act after dissolution that:

(a) is appropriate for winding up the limited partnership's activities; or

(b) would have bound the limited partnership under [section 33] before dissolution if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(a) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(b) the act:

(i) is appropriate for winding up the limited partnership's activities; or

(ii) would have bound the limited partnership under [section 33] before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

Section 64. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and person dissociated as general partner. (1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under [section 63(1)] by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under [section 63(2)], the person is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Section 65. Known claims against dissolved limited partnership. (1) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (2).

(2) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

(a) specify the information required to be included in a claim;

(b) provide a mailing address to which the claim is to be sent;

(c) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant;

(d) state that the claim will be barred if not received by the deadline; and

(e) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on 35-12-803.

(3) A claim against a dissolved limited partnership is barred if the requirements of subsection (2) are met and:

(a) the claim is not received by the specified deadline; or

(b) in the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of the notice of the rejection.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

Section 66. Other claims against dissolved limited partnership. (1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(2) The notice must:

(a) be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in the county in which the limited partnership's designated office is or was last located;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

(c) state that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within 5 years after publication of the notice; and

(d) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on 35-12-803.

(3) If a dissolved limited partnership publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within 5 years after the publication date of the notice:

(a) a claimant that did not receive notice in a record under [section 65];

(b) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) against the dissolved limited partnership to the extent of its undistributed assets;

(b) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(c) against any person liable on the claim under 35-12-803.

Section 67. Liability of general partner and person dissociated as general partner when claim against limited partnership barred. If a claim against a dissolved limited partnership is barred under [section 65 or 66], any corresponding claim under 35-12-803 is also barred.

Section 68. Disposition of assets — when contributions required. (1) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be

applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(2) Any surplus remaining after the limited partnership complies with subsection (1) must be paid in cash as a distribution.

(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (1) with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under [section 55] shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under subsection (3)(a) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by subsection (3)(b), further additional contributions are determined and due in the same manner as provided in that subsection.

(4) A person that makes an additional contribution under subsection (3)(b) or (3)(c) may recover from any person whose failure to contribute under subsection (3)(a) or (3)(b) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(5) The estate of a deceased individual is liable for the person's obligations under this section.

(6) An assignee for the benefit of creditors of a limited partnership or a partner or a person appointed by a court to represent creditors of a limited partnership or a partner may enforce a person's obligation to contribute under subsection (3).

Section 69. Section 35-12-1301, MCA, is amended to read:

"35-12-1301. Law governing Governing law. (1) ~~Subject to the constitution and public policy of this state, the~~ *The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.*

(2) *A foreign limited partnership may not be denied registration a certificate of authority by reason of any difference between those the laws of the jurisdiction under which a foreign limited partnership is organized and the laws of this state.*

(3) *A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state.*"

Section 70. Section 35-12-1302, MCA, is amended to read:

"35-12-1302. Registration Application for certificate of authority. (1) Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1)(a) ~~the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable and, if the name does not comply with 35-12-505, an alternate name adopted pursuant to [section 73(1)];~~

(2)(b) ~~the name of the state in which or other jurisdiction under whose law the foreign limited partnership is organized was formed and the date of the foreign limited partnership's formation;~~

(3)(c) ~~the name and business mailing address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint. An agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state. the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the business mailing address of the required office;~~

(4) ~~a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;~~

(5)(d) ~~the address of the office required to be maintained in the state of the foreign limited partnership's organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership the information required in 35-7-105(1);~~

(6)(e) ~~the name and business mailing address of each of the foreign limited partnership's general partner partners; and~~

(7)(f) ~~the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by whether the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn is a foreign limited liability limited partnership.~~

(2) *A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import dated within 6 months of its submission signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized."*

Section 71. Activities not constituting transacting business. (1) Activities of a foreign limited partnership that do not constitute transacting business in this state within the meaning of [sections 71 through 74] include:

(a) maintaining, defending, and settling an action or proceeding;

(b) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, and maintaining property so acquired;

(i) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and

(j) transacting business in interstate commerce.

(2) For purposes of [sections 71 through 74], the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1), constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

Section 72. Filing of certificate of authority. Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application, shall prepare, sign, and file a certificate of authority to transact business in this state, and shall, upon payment of a fee, send a copy of the filed certificate to the foreign limited partnership or its representative.

Section 73. Noncomplying name of foreign limited partnership. (1) A foreign limited partnership whose name does not comply with 35-12-505 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with 35-12-505. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not comply with Title 30, chapter 13, part 2. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under Title 30, chapter 13, part 2, to transact business in this state under another name.

(2) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with 35-12-505, it may not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority.

Section 74. Revocation of certificate of authority. (1) A certificate of authority of a foreign limited partnership to transact business in this state may

be revoked by the secretary of state in the manner provided in subsections (2) and (3) if the foreign limited partnership does not:

- (a) pay any fee, tax, or penalty due to the secretary of state under this chapter or other law;
- (b) appoint and maintain an agent for service of process as required by 35-7-105; or
- (c) deliver for filing a statement of a change under 35-7-108 within 30 days after a change has occurred in the name or address of the agent.

(2) In order to revoke a certificate of authority, the secretary of state shall prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state or, if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's designated office. The notice must state:

- (a) the revocation's effective date, which must be at least 60 days after the date the secretary of state sends the copy; and
- (b) the foreign limited partnership's failures to comply with subsection (1) that are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection (1) stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice.

Section 75. Section 35-12-1307, MCA, is amended to read:

~~“35-12-1307. Transaction of business without registration~~
Cancellation of certificate of authority — effect of failure to have certificate. (1) *In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership shall deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under [section 20].*

~~(1)(2)~~ (2) A foreign limited partnership transacting business in this state without registration may not maintain any *an* action, suit, or proceeding in any court of this state until unless it has registered a certificate of authority to transact business in this state.

~~(2)(3)~~ (3) The failure of a foreign limited partnership to register *have a certificate of authority to transact business in* in this state does not impair the validity of any contract or act of the foreign limited partnership and does not or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

~~(3)(4)~~ (4) A limited partner of a foreign limited partnership is not liable as a general partner for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's transacting having transacted business in this state without registration a certificate of authority.

~~(4)(5)~~ (5) *If a foreign limited partnership, by transacting transacts business in this state without registration a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process with respect to claims for relief rights of action arising out of the transaction of business in this state.”*

Section 76. Section 35-12-1308, MCA, is amended to read:

~~“35-12-1308. Action by attorney general.~~ The attorney general may bring an action to restrain a foreign limited partnership from transacting

business in this state in violation of ~~35-12-1301 through 35-12-1307~~ *this chapter.*”

Section 77. Direct action by partner. (1) Subject to subsection (2), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership’s activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(2) A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 78. Section 35-12-1401, MCA, is amended to read:

“35-12-1401. Right of Derivative action. A limited partner may bring maintain a derivative action in the to enforce a right of a limited partnership to recover a judgment in its favor if:

(1) ~~the partner first makes a demand on the general partners having authority to do so have refused requesting that they cause the limited partnership to bring the an action or an effort to cause those general partners to bring the action is not likely to succeed to enforce the right and the general partners do not bring the action within a reasonable time; or~~

(2) *a demand would be futile.*”

Section 79. Section 35-12-1402, MCA, is amended to read:

“35-12-1402. Proper plaintiff. In a A derivative action, the plaintiff must be may be maintained only by a person that is a partner at the time of bringing the action is commenced and:

(1) ~~must have been that was a partner at the time of the transaction of which the plaintiff complains when the conduct giving rise to the action occurred; or~~

(2) ~~the plaintiffs whose status as a partner must have devolved by operation of law or pursuant to the terms of the partnership agreement from a person who that was a partner at the time of the transaction conduct.~~”

Section 80. Section 35-12-1403, MCA, is amended to read:

“35-12-1403. Pleading. In any a derivative action, the complaint shall set forth must state with particularity:

(1) ~~the effort of the plaintiff to secure initiation of the action by a general partner having authority to do so date and content of the plaintiff’s demand and the general partners’ response to the demand; or~~

(2) ~~the reasons for not making the effort why the demand should be excused as futile.~~”

Section 81. Section 35-12-1404, MCA, is amended to read:

“35-12-1404. Expenses Proceeds and expenses. (1) ~~If Except as provided in subsection (2):~~

(a) ~~any proceeds or other benefits of a derivative action, is successful, in whole or in part, or anything is received by the plaintiff as a result of a whether by judgment, compromise, or settlement, of an action or claim, belong to the limited partnership and not to the derivative plaintiff;~~

(b) *if the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.*

(2) *If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to account to from the recovery of the limited partnership for the remainder of the proceeds received by the plaintiff.*

Section 82. Definitions. As used in [sections 82 through 94], the following definitions apply:

(1) “Constituent limited partnership” means a constituent organization that is a limited partnership.

(2) “Constituent organization” means an organization that is party to a merger.

(3) “Converted organization” means the organization into which a converting organization converts pursuant to [sections 83 through 86].

(4) “Converting limited partnership” means a converting organization that is a limited partnership.

(5) “Converting organization” means an organization that converts into another organization pursuant to [section 83].

(6) “General partner” means a general partner of a limited partnership.

(7) “Governing statute” of an organization means the statute that governs the organization’s internal affairs.

(8) “Organization” means a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; a limited liability company; a business trust; a corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(9) “Organizational document” means:

(a) for a domestic or foreign general partnership, its partnership agreement;

(b) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) for a domestic or foreign limited liability company, its articles of organization and operating agreement or comparable records as provided in its governing statute;

(d) for a business trust, its agreement of trust and declaration of trust;

(e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders that are authorized by its governing statute or comparable records as provided in its governing statute; and

(f) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(10) “Personal liability” means personal liability for a debt, liability, or other obligation of an organization that is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) by the organization’s governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(b) by the organization’s organizational documents under a provision of the organization’s governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other

obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(11) “Surviving organization” means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

Section 83. Conversion. (1) An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization pursuant to [sections 82 through 86] and this section and a plan of conversion if:

- (a) the other organization’s governing statute authorizes the conversion;
 - (b) the conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
 - (c) the other organization complies with its governing statute in effecting the conversion.
- (2) A plan of conversion must be in a record and must include:
- (a) the name and form of the organization before conversion;
 - (b) the name and form of the organization after conversion;
 - (c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and
 - (d) the organizational documents of the converted organization.

Section 84. Action on plan of conversion by converting limited partnership. (1) Subject to [section 91], a plan of conversion must be consented to by all the partners of a converting limited partnership.

(2) Subject to [section 91] and any contractual rights, after a conversion is approved, and at any time before a filing is made under [section 85], a converting limited partnership may amend the plan or abandon the planned conversion:

- (a) as provided in the plan; and
- (b) except as prohibited by the plan, by the same consent as was required to approve the plan.

Section 85. Filings required for conversion — effective date. (1) After a plan of conversion is approved:

- (a) a converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include:
 - (i) a statement that the limited partnership has been converted into another organization;
 - (ii) the name and form of the organization and the jurisdiction of its governing statute;
 - (iii) the date the conversion is effective under the governing statute of the converted organization;
 - (iv) a statement that the conversion was approved as required by this chapter;
 - (v) a statement that the conversion was approved as required by the governing statute of the converted organization;
 - (vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of [section 86(3)]; and

(vii) a statement that the certificate of limited partnership is to be canceled as of the date on which the conversion took effect; and

(b) if the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by 35-12-601:

(i) a statement that the limited partnership was converted from another organization;

(ii) the name and form of the organization and the jurisdiction of its governing statute; and

(iii) a statement that the conversion was approved in a manner that complied with the organization's governing statute.

(2) In the case of a limited partnership, the filing of articles of organization under subsection (1)(a) cancels its certificate of limited partnership as of the date on which the conversion took effect.

(3) A conversion becomes effective:

(a) if the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(b) if the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

Section 86. Effect of conversion. (1) An organization that has been converted pursuant to [sections 82 through 94] is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting organization remains vested in the converted organization;

(b) all debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization; and

(e) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in 35-7-113.

Section 87. Merger. (1) A limited partnership may merge with one or more other constituent organizations pursuant to [sections 88 through 90], this section, and a plan of merger if:

(a) the governing statute of each of the other organizations authorizes the merger;

(b) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(c) each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger must be in a record and must include:

(a) the name and form of each constituent organization;

(b) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) if the surviving organization is to be created by the merger, the surviving organization's organizational documents; and

(e) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

Section 88. Action on plan of merger by constituent limited partners. (1) Subject to [section 91], a plan of merger must be consented to by all the partners of a constituent limited partnership.

(2) Subject to [section 91] and any contractual rights, after a merger is approved and at any time before a filing is made under [section 89], a constituent limited partnership may amend the plan or abandon the planned merger:

(a) as provided in the plan; and

(b) except as prohibited by the plan, with the same consent as was required to approve the plan.

Section 89. Filings required for merger — effective date. (1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(b) each other preexisting constituent organization, by an authorized representative.

(2) The articles of merger must include:

(a) the name and form of each constituent organization and the jurisdiction of its governing statute;

(b) the name and form of the surviving organization, the jurisdiction of its governing statute, and if the surviving organization is created by the merger, a statement to that effect;

(c) the date the merger is effective under the governing statute of the surviving organization;

(d) if the surviving organization is to be created by the merger:

(i) if it will be a limited partnership, the limited partnership's certificate of limited partnership; or

(ii) if it will be an organization other than a limited partnership, the organizational document that creates the organization;

(e) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(f) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(g) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of [section 90(2)]; and

(h) any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.

(4) A merger becomes effective under [sections 82 through 94]:

(a) if the surviving organization is a limited partnership, upon the later of:

(i) compliance with subsection (3); or

(ii) subject to [section 20(3)], as specified in the articles of merger; or

(b) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

Section 90. Effect of merger. (1) When a merger becomes effective:

(a) the surviving organization continues or comes into existence;

(b) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(c) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) all debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(e) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(f) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(g) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(h) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of chapter 12;

(i) if the surviving organization is created by the merger:

(i) if it is a limited partnership, the certificate of limited partnership becomes effective; or

(ii) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(j) if the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes

of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in 35-7-113.

Section 91. Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status. (1) If a partner of a converting limited partnership or constituent limited partnership will have personal liability with respect to a converted organization or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner unless:

(a) the limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(b) the partner has consented to the provision of the partnership agreement.

(2) An amendment to a certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(a) the limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(b) each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(3) A partner does not give the consent required by subsection (1) or (2) merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

Section 92. Liability of general partner after conversion or merger.

(1) A conversion or merger under [sections 82 through 94] does not discharge any liability under 35-12-803 and [section 55] of a person that was a general partner in or dissociated as a general partner from a converting limited partnership or constituent limited partnership, but:

(a) the provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(b) for the purposes of applying those provisions, the converted organization or surviving organization is considered to be the converting limited partnership or constituent limited partnership; and

(c) if a person is required to pay any amount under this subsection (1):

(i) the person has a right of contribution from each other person that was liable as a general partner under 35-12-803 when the obligation was incurred and has not been released from the obligation under [section 55]; and

(ii) the contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) In addition to any other liability provided by law:

(a) a person that immediately before a conversion or merger became effective was a general partner in a converting limited partnership or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted organization or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective if, at the time the third party enters into the transaction, the third party:

(i) does not have notice of the conversion or merger; and

(ii) reasonably believes that:

(A) the converted organization or surviving organization is the converting limited partnership or constituent limited partnership;

(B) the converting limited partnership or constituent limited partnership is not a limited liability limited partnership; and

(C) the person is a general partner in the converting limited partnership or constituent limited partnership; and

(b) a person that was dissociated as a general partner from a converting limited partnership or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted organization or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective if:

(i) immediately before the conversion or merger became effective the converting limited partnership or surviving limited partnership was a not a limited liability limited partnership; and

(ii) at the time the third party enters into the transaction, less than 2 years have passed since the person dissociated as a general partner and the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion or merger; and

(C) reasonably believes that the converted organization or surviving organization is the converting limited partnership or constituent limited partnership, the converting limited partnership or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting limited partnership or constituent limited partnership.

Section 93. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger. (1) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting limited partnership or constituent limited partnership binds the converted organization or surviving organization after the conversion or merger becomes effective if:

(a) before the conversion or merger became effective, the act would have bound the converting limited partnership or constituent limited partnership under [section 33]; and

(b) at the time the third party enters into the transaction, the third party:

(i) does not have notice of the conversion or merger; and

(ii) reasonably believes that the converted or surviving business is the converting limited partnership or constituent limited partnership and that the person is a general partner in the converting limited partnership or constituent limited partnership.

(2) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting limited partnership or constituent limited partnership binds the converted organization or surviving organization after the conversion or merger becomes effective if:

(a) before the conversion or merger became effective, the act would have bound the converting limited partnership or constituent limited partnership under [section 33] if the person had been a general partner; and

(b) at the time the third party enters into the transaction, less than 2 years have passed since the person dissociated as a general partner and the third party:

- (i) does not have notice of the dissociation;
- (ii) does not have notice of the conversion or merger; and

(iii) reasonably believes that the converted organization or surviving organization is the converting limited partnership or constituent limited partnership and that the person is a general partner in the converting limited partnership or constituent limited partnership.

(3) If a person having knowledge of the conversion or merger causes a converted organization or surviving organization to incur an obligation under subsection (1) or (2), the person is liable:

(a) to the converted organization or surviving organization for any damage caused to the organization arising from the obligation; and

(b) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

Section 94. Part not exclusive. [Sections 82 through 94] do not preclude an entity from being converted or merged under other law.

Section 95. Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

Section 96. Application to existing relationships. (1) Before [the effective date of this act], [this act] governs only:

(a) a limited partnership formed on or after [the effective date of this act]; and

(b) except as otherwise provided in subsections (3) and (4), a limited partnership formed before [the effective date of this act] that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to [this act].

(2) Except as otherwise provided in subsection (3), on and after [the effective date of this act], [this act] governs all limited partnerships.

(3) With respect to a limited partnership formed before [the effective date of this act], the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) Section 35-12-509(3) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before [the effective date of this act].

(b) The limited partnership is not required to amend its certificate of limited partnership to comply with 35-12-601(1)(d).

(c) [Sections 49 and 50] do not apply, and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before [the effective date of this act].

(d) [Section 51(4)] does not apply.

(e) [Section 51(5)] does not apply, and a court has the same power to expel a general partner as the court had immediately before [the effective date of this act].

(f) Section 35-12-1201(3) does not apply, and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before [the effective date of this act].

(4) With respect to a limited partnership that elects pursuant to subsection (1)(b) to be subject to [this act], after the election takes effect, the provisions of [this act] relating to the liability of the limited partnership's general partners to third parties apply:

(a) before [the effective date of this act], to:

(i) a third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(b) on and after [the effective date of this act], to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under subsection (4)(a)(ii).

Section 97. Repealer. The following sections of the Montana Code Annotated are repealed:

35-12-503. Rules for cases not provided for in this chapter.

35-12-606. Filing in the office of the secretary of state.

35-12-608. Constructive notice.

35-12-609. Delivery of certificates to limited partners.

35-12-702. Voting.

35-12-802. When person ceases to be general partner of limited partnership.

35-12-804. Contributions by general partner.

35-12-805. Voting.

35-12-903. Allocation of profits and losses.

35-12-904. Allocation of distributions.

35-12-1002. Withdrawal of general partner.

35-12-1003. Withdrawal of limited partner.

35-12-1004. Distributions upon withdrawal.

35-12-1007. Limitations on distributions.

35-12-1008. Liability upon return of contributions.

35-12-1101. Nature of partnership interest.

35-12-1102. Assignment of partnership interest.

35-12-1104. Right of assignee to become limited partner.

35-12-1203. Winding up.

35-12-1204. Distribution of assets.

35-12-1303. Issuance of registration.

35-12-1304. Name.

35-12-1305. Changes and amendments.

35-12-1306. Cancellation of registration.

Section 98. Codification instruction. [Sections 3, 8 through 11, 13, 14, 20, 21, 23, 25, 27, 31, 33, 34, 36 through 39, 42, 44, 47 through 57, 62 through 68, 71 through 74, 77, and 82 through 94] are intended to be codified as an integral part of Title 35, chapter 12, and the provisions of Title 35, chapter 12, apply to [sections 3, 8 through 11, 13, 14, 20, 21, 23, 25, 27, 31, 33, 34, 36 through 39, 42, 44, 47 through 57, 62 through 68, 71 through 74, 77, and 82 through 94].

Section 99. 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 100. 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 April 18, 2011

CHAPTER NO. 217

[SB 89]

AN ACT REDUCING THE TIME FOR REVIEW OF SUBDIVISION APPLICATIONS FOR PUBLIC AND PRIVATE WATER SUPPLIES, SEWAGE DISPOSAL FACILITIES, STORM WATER DRAINAGE WAYS, AND SOLID WASTE DISPOSAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND LOCAL DEPARTMENTS OR BOARDS OF HEALTH; CLARIFYING PROCEDURES FOR PROVIDING EVIDENCE OF SYSTEMS COMPLIANCE; REQUIRING THE DEPARTMENT TO NOTIFY APPLICANTS UNDER CERTAIN CIRCUMSTANCES IF AN APPLICATION DOES NOT INCLUDE EVIDENCE OF CERTIFICATION FROM THE LOCAL HEALTH DEPARTMENT OR APPROVAL FROM THE LOCAL GOVERNING BODY; REVISING PROCEDURES FOR DEPARTMENT REVIEW OF SUBDIVISION APPLICATIONS; AMENDING SECTIONS 76-4-104 AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. 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 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(h);

(j) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other

methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat; ~~and. 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.~~

(k) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than ~~50~~ 45 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than ~~60~~ 55 days after the submission of a complete application, as provided in 76-4-125.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622.”

Section 2. Section 76-4-125, MCA, is amended to read:

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

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer

shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

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

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

~~(b)(d)~~ Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within ~~60~~ 55 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

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

(a) the exclusions cited in 76-3-201 and 76-3-204;

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

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

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

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

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

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

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.”

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

Approved April 18, 2011

CHAPTER NO. 218

[SB 140]

AN ACT EXEMPTING CERTAIN MOTOR CARRIERS FROM REGULATION BY THE PUBLIC SERVICE COMMISSION; DEFINING “CHARTER SERVICE”; AMENDING SECTIONS 69-12-101 AND 69-12-102, 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 the certificate of public convenience and necessity issued under this chapter.

(3) “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.

~~(3)~~(4) “Compensation” means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

~~(4)~~(5) “Corporation” means a corporation, company, association, or joint-stock association.

~~(5)~~(6) “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.

~~(6)~~(7) "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.

~~(7)~~(8) "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.

~~(8)~~(9) "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.

~~(9)~~(10) "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.

~~(10)~~(11) "Person" means an individual, firm, or partnership.

~~(11)~~(12) "Public highway" means a public street, road, highway, or way in this state.

~~(12)~~(13) "Railroad" means the movement of cars on rails, regardless of the motive power used.

~~(13)~~(14) "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."

Section 2. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village with a population of less than 500 persons, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2;

(ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; or

(iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection (1)(k), "private, nonprofit organization" means ~~an organization~~ organizations recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(l) *the transportation of a group of passengers by charter service if:*

(i) *the motor vehicle used for the transportation of the passengers is designed to carry more than 26 passengers; and*

(ii) *the motor carrier has obtained a USDOT number from the U.S. department of transportation as provided in 49 CFR 390.19; or*

(m) *the transportation of a group of employees to or from a worksite by a motor carrier under contract with the employer for a period of time of at least 1 year.*

(2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 3. Implementation. (1) The commission shall issue a certificate of public convenience and necessity that authorizes a motor carrier to provide charter service if the motor carrier provides written documentation or business

records to the commission that demonstrate during the 1-year period prior to January 1, 2011, the motor carrier:

- (a) provided charter service;
- (b) transported passengers with a motor vehicle designed to carry more than 10 passengers; and
- (c) obtained a USDOT number from the U.S. department of transportation as provided in 49 CFR 390.19.

(2) The written documentation or business records must be submitted to the commission within 6 months following [the effective date of this act].

(3) The commission shall issue all certificates of public convenience and necessity under subsection (1) by July 1, 2012.

(4) After July 1, 2012, a motor carrier subject to regulation by the commission may not transport passengers in charter service without a certificate of public convenience and necessity.

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

Approved April 18, 2011

CHAPTER NO. 219

[SB 179]

AN ACT ESTABLISHING THE HIGHWAY PATROL OFFICER DAVID DELAITTRE MEMORIAL HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, David DeLaittre proudly, honorably, and courageously served the citizens of Montana as an exemplary highway patrol trooper; and

WHEREAS, David dedicated his life to public safety as he served the people of Montana; and

WHEREAS, David fought courageously as his final service to keep all of us safe upon the highways of this great state; and

WHEREAS, we honor David as he made the ultimate sacrifice as his final duty to the citizens of Montana.

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

Section 1. Highway patrol officer David DeLaittre memorial highway. (1) There is established the highway patrol officer David DeLaittre memorial highway on existing U.S. highway 287 and Montana highway 2 between mile 93.3 and mile 97.3.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved April 18, 2011

CHAPTER NO. 220

[SB 180]

AN ACT SUBSTITUTING THE TERM “CRIMINAL MISCHIEF DAMAGE TO RENTAL PROPERTY” FOR “DAMAGE TO RENTAL PROPERTY” AS AN OFFENSE; AMENDING SECTION 45-6-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 45-6-106, MCA, is amended to read:

“45-6-106. Damage *criminal mischief damage to rental property*. (1) A tenant commits the offense of *criminal mischief* damage to rental property if the tenant purposely or knowingly destroys, defaces, damages, impairs, or removes any part of the premises with a value of at least \$1,000 ~~over the amount of any damage deposit or, if no damage deposit was paid, a value of at least \$1,000~~ or *permits any person to do so* in violation of 70-24-321(2) or 70-33-321(3).

(2) A person convicted of the offense of *criminal mischief* damage to rental property shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person convicted of *criminal mischief* damage to rental property must be ordered to make restitution in an amount and manner to be set by the court pursuant to 46-18-201(5) and 46-18-241 through 46-18-249.

(4) A prosecution under this section is independent of and does not constitute a waiver of any of the rights, duties, obligations, and remedies otherwise provided for under Title 70, chapter 24 or 33.

(5) *A person convicted of criminal mischief damage to rental property under this section is not subject to the provisions of 45-6-101.”*

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

Approved April 18, 2011

CHAPTER NO. 221

[SB 184]

AN ACT ALLOWING THE USE OF BOWS AND ARROWS TO HUNT WILD BUFFALO; CLARIFYING THAT WILD BUFFALO MAY BE HUNTED WITH HUNTING ARMS OTHER THAN BOWS AND ARROWS; AND AMENDING SECTIONS 87-1-304, 87-2-730, AND 87-2-731, MCA.

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

Section 1. Section 87-1-304, MCA, is amended to read:

“87-1-304. Fixing of seasons and bag and possession limits. (1) (a) The commission may:

- (i) fix seasons, bag limits, possession limits, and season limits;

(ii) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and

(iii) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, *wild buffalo or bison*, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, *wild buffalo or bison*, and wolf in those areas.

(b) The commission may restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences.

(c) The commission may declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) The commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Section 87-2-730, MCA, is amended to read:

"87-2-730. Special wild buffalo license — regulation. (1) The public hunting of wild buffalo or bison that have been designated as a species in need of disease control under 81-2-120 is permitted only when authorized by the department of livestock under the provisions set forth in 81-2-120.

(2) The department may issue special licenses to hunt wild buffalo or bison designated as a species in need of disease control when authorized by the department of livestock.

(3) The department shall adopt rules in cooperation with the department of livestock. The rules must provide for:

(a) license drawing procedures;

(b) drawing and application fees consistent with 87-2-113;

(c) notification of license recipients as to when and where they may hunt, but notification may not include information regarding the actual physical location of a wild buffalo or bison other than the prescribed hunting district where the animal may be taken;

(d) fair chase hunting of wild buffalo or bison, including requirements that hunting be conducted on foot and away from public roads and that there be no designation of specific wild buffalo or bison to be hunted;

(e) means of taking and handling of carcasses in the field, which must include provisions for public safety because of the potential for the spread of infectious disease;

(f) *the use of bows and arrows and other hunting arms;*

~~(f)~~(g) tagging requirements for carcasses, skulls, and hides;

~~(g)~~(h) possession limits;

~~(h)~~(i) requirements for transportation and exportation; and

~~(i)~~(j) requirements and criteria for authorization by the state veterinarian and the department of livestock of any public hunting.”

Section 3. Section 87-2-731, MCA, is amended to read:

“87-2-731. (Temporary) Allocation of wild buffalo licenses to tribes for traditional purposes. (1) If the commission authorizes the issuance of 40 or more special wild buffalo licenses in any license year, the department shall issue special licenses to individuals of each tribe designated in subsection (4) to hunt wild buffalo during the regular season for wild buffalo and as prescribed in department rules and regulations. The department shall issue two special wild buffalo licenses to individuals designated by the respective tribal diabetic programs of each of the Montana tribes designated in subsection (4), coincident with the sale of any special wild buffalo licenses for public hunting pursuant to 87-2-730 and in accordance with the terms and conditions of this section.

(2) Wild buffalo taken pursuant to the special licenses issued under subsection (1) must be harvested by tribal members in accordance with the traditional ceremonies of each tribe. All parts of wild buffalo taken pursuant to this section may be possessed and used by each designated tribe in the manner that the tribe sees fit.

(3) Special wild buffalo licenses granted for tribal use pursuant to this section must be issued free of charge. The tribes must be informed of and abide by any rules adopted pursuant to 87-2-730(3)(c) through ~~(3)(h)~~ (3)(i), except that fair chase hunting by tribal members may include hunting conducted on horseback.

(4) The following Montana tribes may designate individuals from their tribal diabetic programs to receive department-issued special licenses, and the individuals are entitled to hunt during the season set aside by the commission for hunting wild buffalo:

(a) Assiniboine and Sioux tribes;

(b) Blackfoot tribe;

- (c) Chippewa Cree tribe;
- (d) Confederated Salish and Kootenai tribes;
- (e) Crow tribe;
- (f) Gros Ventre and Assiniboine tribes;
- (g) Northern Cheyenne tribe; and
- (h) Little Shell band of Chippewa.

(5) Special wild buffalo licenses granted under this section must be offered to the designated tribes as the first wild buffalo licenses available for hunting each year and may be granted to tribal designees in any order. When each of the two individuals designated by each tribe has been offered a license in any license year, any additional available licenses may be issued in the manner provided by the rules adopted by the commission pursuant to 87-2-730.

(6) Use of the special wild buffalo licenses granted under this section to individuals designated by the Montana tribes must coincide with the use of any other special wild buffalo license purchased for public hunting pursuant to 87-2-730. (Terminates July 1, 2015—sec. 5, Ch. 378, L. 2005.)”

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved April 18, 2011

CHAPTER NO. 222

[SB 213]

AN ACT ESTABLISHING A PINTLER VETERANS' MEMORIAL SCENIC HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING THAT NEW ROADWAY MAPS INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Pintler veterans' memorial scenic highway. (1) There is established the Pintler veterans' memorial scenic highway on the existing Montana highway 1.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are regularly updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved April 18, 2011

CHAPTER NO. 223

[SB 304]

AN ACT GENERALLY REVISING DEPENDENCY AND NEGLECT LAWS; CLARIFYING VENUE AND CREATING LONG-ARM JURISDICTION OVER CHILDREN WHO HAVE BEEN REMOVED FROM THE STATE; CLARIFYING THAT MANDATORY REPORTERS OF SUSPECTED CHILD ABUSE MUST REPORT ABUSE REGARDLESS OF THE IDENTITY OF THE ABUSER; REMOVING DUPLICATION IN THE SHOW CAUSE HEARING PROCESS AND THE ADJUDICATION HEARING PROCESS; MODIFYING THE PROCEDURE FOR OBTAINING EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-103, 41-3-201, 41-3-301, 41-3-427, AND 41-3-432, MCA.

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

Section 1. Section 41-3-103, MCA, is amended to read:

“41-3-103. Jurisdiction and venue. (1) ~~In~~ *Except as provided in the federal Indian Child Welfare Act, in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:*

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; ~~or~~

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;;

(d) *a youth or youth’s parent or guardian who resides in Montana;*

(e) *a youth or youth’s parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.*

(2) ~~Either~~ *Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth’s parent or guardian resides has initial jurisdiction over a youth alleged to be a youth in need of care or has resided within 180 days before the filing of a petition under this part.”*

Section 2. 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.

(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, 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)(a);

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(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.

(5) (a) Except as provided in subsection (5)(b) or (5)(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.

(6) 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 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 3. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any ~~youth~~ *child* is in immediate or apparent danger of harm may immediately remove the ~~youth~~ *child* and place the ~~youth~~ *child* in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take

appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical *or legal* custody of the ~~youth~~ *child* of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical *or legal* custody of the ~~youth~~ *child* that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) If a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

~~(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.~~

~~(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.~~

~~(7)~~(7) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child,

the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. ~~The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.~~

~~(8)~~(8) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 4. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services — 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. The affidavit of the department representative must contain information, if any, regarding statements made by the parents about the facts of the case.*

~~(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition. 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) 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.~~

~~(d)~~(e) 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 ~~youth~~ 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 social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

(2) ~~The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. 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) 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;

(d) 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;

(e) 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;

(f) 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

(g) 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) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) 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) The petition must be served as provided in 41-3-422."

Section 5. Section 41-3-432, MCA, is amended to read:

“41-3-432. Show cause hearing — order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) ~~At the show cause hearing~~ *If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department,* the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony *regarding the disputed issues.* Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) ~~The~~ *Except as provided in the federal Indian Child Welfare Act, if applicable,* the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Approved April 18, 2011

CHAPTER NO. 224

[SB 320]

AN ACT ENCOURAGING THE UPGRADING OF TRANSMISSION LINES WITHIN EXISTING RIGHTS-OF-WAY TO AVOID THE PROLIFERATION OF NEW TRANSMISSION CORRIDORS; CLARIFYING LEGISLATIVE FINDINGS AND CERTAIN DEFINITIONS UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-102 AND 75-20-104, 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 75-20-102, MCA, is amended to read:

"75-20-102. Policy and legislative findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility Siting Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(3) It is also constitutionally declared in the state of Montana that the inalienable rights of the citizens of this state include the right to pursue life's basic necessities, to enjoy and defend life and liberty, to acquire, possess, and protect property, and to seek safety, health, and happiness in all lawful ways. The balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans.

(4) The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities are in compliance with state law and that an electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of compliance acquired pursuant to this chapter.

(5) The legislature finds that increasing the capacity of existing transmission lines by replacing less efficient aging low-voltage transmission lines with higher-voltage lines, installing new conductors to lower impedance, and adding circuits to existing transmission lines within existing linear corridors reduces energy loss, conserves energy, and prevents unreasonable depletion and degradation of natural resources. Therefore, transmission upgrades within existing corridors serve the public interest, convenience, and necessity and transmission providers are encouraged to construct those transmission upgrades.

~~(5)~~(6) The legislature also finds that it is the purpose of this chapter to:

(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;

(b) ensure consideration of socioeconomic impacts;

(c) provide citizens with the opportunity to participate in facility siting decisions; and

(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

Section 2. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

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

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

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

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

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts ~~but less than 230 kilovolts~~ for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include ~~an electric transmission line~~ *lines that is are collectively less than 150 miles in length and extends from and are required under state or federal regulations and laws, with respect to reliability of service, for an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility to interconnect to a regional transmission grid or secure firm transmission service to use the grid* for which the person planning to construct the line *or lines* has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline *or centerlines*;

(iv) does not include an upgrade to an existing transmission line *of a design capacity of 50 kilovolts or more* to increase that line's capacity ~~to less than or equal to 230 kilovolts~~, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this

subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas *or conform to state or federal safety, reliability, and operational standards designed to safeguard the transmission network and protect electrical workers and the public.*

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

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

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

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

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying; or

(e) *installing additional circuits.*

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

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

Section 4. Applicability. [This act] applies to applications for certificates filed after [the effective date of this act].

Approved April 18, 2011

CHAPTER NO. 225

[HB 12]

AN ACT REVISING PENALTIES FOR ALCOHOL-RELATED DRIVING OFFENSES BY EXTENDING THE POSSIBLE JAIL TIME FOR CERTAIN MISDEMEANOR OFFENSES; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) Except as provided in subsection (4), a person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than ~~6 months~~ *6 months* and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than ~~12 months~~ *1 year* and by a fine of not less than \$600 or more than \$2,000. The initial 24 hours of the imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) Except as provided in subsection (4), on a second conviction, the person shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than ~~6 months~~ *1 year*, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than 14 days or more than ~~12 months~~ *1 year*. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(3) Except as provided in subsection (4), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of

the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than ~~12 months~~ *1 year* and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.”

Section 2. Section 61-8-722, MCA, is amended to read:

“61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) Except as provided in subsection (4), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than ~~10 days~~ *6 months* and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than ~~20 days~~ *6 months* and by a fine of not less than \$600 or more than \$2,000.

(2) Except as provided in subsection (4), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest, or more than ~~30 days~~ *1 year* and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days, which may not be served on home arrest, or more than ~~60 days~~ *1 year* and by a fine of not less than \$1,200 or more than \$2,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.

(3) Except as provided in subsection (4), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than ~~10~~ *30* days, to be served in the county jail and not on home arrest, or more than ~~6 months~~ *1 year* and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than ~~20~~ *60* days, which may not be served on home arrest, or more than ~~12 months~~ *1 year* and by a fine of not less than \$2,000 or more than \$10,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.”

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

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

Approved April 20, 2011

CHAPTER NO. 226

[HB 69]

AN ACT ENCOURAGING DUI COURT PARTICIPATION; REVISING PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; ALLOWING DUI COURTS TO SUSPEND ALL OR A PORTION OF IMPRISONMENT SENTENCES; DEFINING A DUI COURT; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Suspension of imprisonment sentence for DUI court participation — DUI court defined. (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under 61-8-714 or 61-8-722, except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-401 or 61-8-406 and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-732 and to end the participant's criminal behavior associated with driving under the influence of drugs or alcohol or with excessive blood alcohol concentration.

Section 2. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) (a) Except as provided in subsection (4), a person convicted of a *first* violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than ~~6 months~~ 6 months and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than ~~12 months~~ 1 year and by a fine of not less than \$600 or more than \$2,000.

(b) ~~The initial 24 hours of the mandatory minimum imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment sentence~~ and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) ~~Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the~~ The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) (a) Except as provided in subsection (4), ~~on a second conviction, the person~~ a person convicted of a second violation of 61-8-401 shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than ~~6 months~~ 1 year, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person

shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than 14 days or more than ~~12 months~~ 1 year.

(b) ~~At least 48 hours of the~~ *The mandatory minimum* imprisonment term must be served and served consecutively and may not be served under home arrest. ~~The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.~~

(c) ~~Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the~~ *The remainder of the* imprisonment sentence may be suspended for a period of up to 1 year pending *the person's* successful completion of a chemical dependency treatment program ~~by the person pursuant to 61-8-732.~~

(3) (a) ~~Except as provided in subsection (4), on the third conviction, the person~~ *a person convicted of a third violation of 61-8-401* shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than ~~12 months~~ 1 year and by a fine of not less than \$2,000 or more than \$10,000.

(b) ~~At least 48 hours of the~~ *The mandatory minimum* imprisonment term must be served and served consecutively and may not be served under home arrest ~~and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.~~

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending *the person's* successful completion of a chemical dependency treatment program ~~by the person pursuant to 61-8-732.~~

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.”

Section 3. Section 61-8-722, MCA, is amended to read:

“61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) Except as provided in subsection (4), a person convicted of a *first* violation of 61-8-406 shall be punished by imprisonment for not more than ~~10 days~~ 6 months and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than ~~20 days~~ 6 months and by a fine of not less than \$600 or more than \$2,000.

(2) (a) Except as provided in subsection (4), ~~on a second conviction a person convicted of a second violation of 61-8-406, the person~~ shall be punished by imprisonment for not less than 5 days, ~~to be served in the county jail and not on home arrest,~~ or more than ~~30 days~~ 1 year and by a fine of not less than \$600 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days, ~~which may not be served on home~~

arrest, or more than ~~60 days~~ 1 year and by a fine of not less than \$1,200 or more than \$2,000.

(b) ~~The imposition or execution of the first 5 days of the mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.~~

(c) ~~The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.~~

(3) (a) ~~Except as provided in subsection (4), on a third conviction a person convicted of a third violation of 61-8-406, the person shall be punished by imprisonment for not less than 10 30 days, to be served in the county jail and not on home arrest, or more than 6 months 1 year and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 20 60 days, which may not be served on home arrest, or more than 12 months 1 year and by a fine of not less than \$2,000 or more than \$10,000.~~

(b) ~~The imposition or execution of the first 10 days of the imprisonment sentence mandatory minimum imprisonment sentence may not be served under home arrest and may not be suspended unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.~~

(c) ~~The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.~~

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 1].

Section 5. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 20, 2011

CHAPTER NO. 227

[HB 125]

AN ACT GENERALLY REVISING SECURITIES AND INSURANCE LAWS; PROVIDING CONSISTENCY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR JUDICIAL REVIEW OF A SECURITIES COMMISSIONER'S ORDER; INCLUDING CONFIDENTIAL DOCUMENTS RECEIVED FROM ANOTHER STATE AGENCY AS AMONG THOSE MAINTAINED AS CONFIDENTIAL BY THE INSURANCE COMMISSIONER; REMOVING REGULATION OF EXCESS DEPOSITS BY INSURERS; REVISING THE DEFINITION OF "INSURER" RELATING TO CAPTIVE RISK RETENTION GROUPS; APPLYING RISK-BASED CAPITAL REPORTING REQUIREMENTS TO CAPTIVE RISK RETENTION GROUPS; INCLUDING A TREND TEST FOR RISK-BASED CAPITAL REPORTING

FOR PROPERTY AND CASUALTY INSURERS; REVISING THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL AND TAX CREDIT PROGRAM; REVISING LAWS RELATED TO CAPTIVE INSURANCE COMPANIES; ELIMINATING A PENALTY PROVISION; ELIMINATING CERTAIN REQUIREMENTS FOR BASIC AND STANDARD HEALTH BENEFIT PLANS; AMENDING SECTIONS 15-30-2368, 15-31-130, 30-10-115, 30-10-209, 30-10-308, 33-1-311, 33-2-601, 33-2-1501, 33-2-1903, 33-2-1904, 33-4-309, 33-18-605, 33-22-508, 33-22-1803, 33-22-1821, 33-22-2002, 33-22-2004, 33-22-2006, 33-22-2008, 33-28-102, 33-28-107, 33-28-108, AND 33-28-207, MCA; REPEALING SECTIONS 33-2-609, 33-22-103, 33-22-1827, AND 33-22-1828, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-30-2368, MCA, is amended to read:

“15-30-2368. Tax credit for health insurance premiums paid — eligible small employers — pass-through entities. (1) There is a tax credit, determined under Title 33, chapter 22, part 20, for eligible small employers who are individuals against the taxes imposed in 15-30-2103 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees’ spouses and dependents under a group health plan as defined in 33-22-2002 subject to Title 33, chapter 22, part 20.

(2) If the employer is an S. corporation, the shareholders may claim a pro rata share of the tax credit. If the employer is a partnership, the credit may be claimed by the partners in the same proportion used to report the partnership’s income or loss for Montana income tax purposes.”

Section 2. Section 15-31-130, MCA, is amended to read:

“15-31-130. Tax credit for health insurance premiums paid — eligible small employers — corporations. There is a tax credit, as determined under Title 33, chapter 22, part 20, for eligible small employers against the taxes imposed in 15-31-101 and 15-31-502 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees’ spouses and dependents under a group health plan as defined in 33-22-2002 subject to Title 33, chapter 22, part 20.”

Section 3. Section 30-10-115, MCA, is amended to read:

“30-10-115. Deposits to general fund — exception. (1) All fees and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter, except for ~~portfolio~~ notice filing fees described in 30-10-209(1)(d) and examination costs collected under 30-10-210, must be deposited in the general fund.

(2) All ~~portfolio~~ notice filing fees collected under 30-10-209(1)(d) and examination costs collected under 30-10-210 must be deposited in the state special revenue fund in an account to the credit of the state auditor’s office. The funds allocated by this section to the state special revenue account may ~~only~~ be used *only* to defray the expenses of the state auditor’s office in discharging its administrative and regulatory powers and duties in relation to ~~portfolio~~ notice filing under 33-10-209(1)(d) and examinations. Any excess fees must be deposited in the general fund.”

Section 4. Section 30-10-209, MCA, is amended to read:

“30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of \$200 for the first \$100,000 of initial issue or portion of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum fee of \$1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than \$200 or more than \$1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state, or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a ~~portfolio~~ notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The ~~portfolio~~ notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. The issuer shall pay a fee of \$50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is \$200 for original registration and \$200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is \$50 for original registration with each employer, \$50 for each annual renewal, and \$50 for each transfer. A salesperson who is registered as an investment adviser representative with a broker-dealer registered as an investment adviser is not required to pay the \$50 fee to register as an investment adviser representative.

(c) For a federal covered adviser, the fee is \$200 for the initial notice filing and \$200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is \$50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 may be refunded.

(6) Except for ~~portfolio~~ notice filing fees established in ~~this section~~ *subsection (1)(d)* and examination costs collected under 30-10-210, all fees,

miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund.”

Section 5. Section 30-10-308, MCA, is amended to read:

“30-10-308. Judicial review of orders. Any person aggrieved by a final order of the commissioner ~~may obtain a~~ *is entitled to judicial review of the order in any court of competent jurisdiction by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner’s order as provided in Title 2, chapter 4, part 7.”*

Section 6. Section 33-1-311, MCA, is amended to read:

“33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) *another state agency*, an insurance department from another state, a federal agency, or a foreign government that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to *another state agency*, the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, a foreign government, or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is a criminal justice agency as defined in 44-5-103.”

Section 7. Section 33-2-601, MCA, is amended to read:

“33-2-601. Authorized deposits of insurers. The following deposits of insurers when made through the commissioner ~~shall~~ *must* be accepted and held and ~~shall be~~ *are* subject to the provisions of this part:

- (1) deposits required under this code for authority to transact insurance in this state;
- (2) deposits of domestic insurers when ~~made pursuant to~~ *required by* the laws of other states, provinces, and countries as ~~requirement~~ *a condition for the* authority to transact insurance ~~in such state, province, or country; or~~
- (3) deposits of reserves made by domestic life insurers under 33-2-531;
- ~~(4) deposits in such additional amounts as are permitted to be made under 33-2-609.”~~

Section 8. Section 33-2-1501, MCA, is amended to read:

“33-2-1501. Definitions. As used in parts 15 through 17 of this chapter, the following definitions apply:

- (1) “Accredited state” means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.
- (2) “Actuary” means a person who is a member in good standing of the American academy of actuaries.
- (3) “Captive insurer” means:
 - (a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the parent entity and its affiliates; or
 - (b) in the case of a group or association, an insurer that is owned by the member insureds and whose exclusive purpose is to insure risks to member insureds and their affiliates.
- (4) “Control” or “controlled” has the meaning defined in 33-2-1101.
- (5) “Controlled insurer” means an authorized insurer that is controlled, directly or indirectly, by a producer.
- (6) “Controlling person” means a person, firm, association, or corporation that has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary.
- (7) “Controlling producer” means a producer who, directly or indirectly, controls an insurer.
- (8) (a) “Insurer” means any person, firm, association, or corporation authorized, under Title 33, chapter 2, part 1, to transact insurance business in this state.
 - (b) ~~The~~ *With regard to part 15 only, the* following are not insurers:
 - (i) risk retention groups as defined in:
 - (A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);
 - (B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or
 - (C) Title 33, chapter 11, part 1;
 - (ii) residual market pools and joint underwriting authorities or associations; or
 - (iii) captive insurers.
 - (c) *With regard to parts 16 and 17, captive insurers are not insurers but captive risk retention groups are insurers.*

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents:

(i) an employee of the insurer;

(ii) a manager of the United States branch of an alien insurer;

(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; or

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney.

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer."

Section 9. Section 33-2-1903, MCA, is amended to read:

"33-2-1903. RBC reports. (1) ~~Except as provided in 33-28-107(4)(b), each~~ *Each* domestic insurer shall, on or before each March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the previous calendar year in a form and containing information as required by the RBC instructions. In addition, each domestic insurer shall file its RBC report:

(a) with the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business if that insurance commissioner has notified the insurer of the request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) 15 days from the receipt of notice to file its RBC report with that state; or

(ii) the March 1 filing date.

(2) A life and disability insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account and may adjust for the covariance between:

(a) the risk with respect to the insurer's assets;

(b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) the interest rate risk with respect to the insurer's business; and

(d) all other business risks and other relevant risks as are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula ~~shall~~ *must* take into account and may ~~adjust~~ *be adjusted* for the covariance between:

(a) asset risk;

- (b) credit risk;
- (c) underwriting risk; and

(d) all other business risks and other relevant risks that are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the risk-based capital requirements contained in this part and the formulas, schedules, and instructions referenced in 33-2-1906 through 33-2-1913 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this part. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this part.

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. An RBC report so adjusted *as provided in this subsection* is referred to as an adjusted RBC report.”

Section 10. Section 33-2-1904, MCA, is amended to read:

“33-2-1904. Company action level event. (1) “Company action level event” means any of the following events:

(a) the filing of an RBC report by an insurer ~~which indicates~~ *indicating* that:

(i) the insurer’s total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; ~~or~~

(ii) for a life or disability insurer, the insurer has total adjusted capital that:

(A) is greater than or equal to its company action level RBC but less than ~~the product of its authorized control level RBC and multiplied by 2.5; and that~~

(B) has a negative trend; *or*

(iii) *for a property and casualty insurer, the insurer has total adjusted capital that:*

(A) *is greater than or equal to its company action level RBC but less than its authorized control level RBC multiplied by 3; and*

(B) *triggers the trend test determined in accordance with the trend test calculation included in the RBC instructions;*

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or if the commissioner has rejected the insurer’s challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that must:

(a) identify the conditions that contribute to the company action level event;

(b) contain proposals of corrective actions that the insurer intends to take and that would be expected to result in the elimination of the company action level event;

(c) provide projections of the insurer’s financial results in the current year and at least the next 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for

both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(d) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) identify the quality of and problems associated with the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan must be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer challenges an adjusted RBC report pursuant to 33-2-1908, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within 60 days after ~~the submission by~~ an insurer *of submits* an RBC plan to the commissioner, the commissioner shall notify the insurer as to whether the RBC plan may be implemented or is unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may ~~set forth proposed~~ *propose* revisions ~~that will intended~~ *to* render the RBC plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) within 45 days after the notification from the commissioner; or

(b) if the insurer challenges the notification from the commissioner under 33-2-1908, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) ~~In the event of a notification by~~ *If* the commissioner ~~to notifies~~ an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, at the commissioner's discretion, subject to the insurer's right to a hearing under 33-2-1908, specify in the notification that the notification constitutes a regulatory action level event.

(6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) the state has an RBC provision substantially similar to 33-2-1909(1); and

(b) the insurance commissioner of that state has notified the insurer in writing of its request for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4)."

Section 11. Section 33-4-309, MCA, is amended to read:

"33-4-309. Directors — election and term. (1) Directors of a farm mutual insurer ~~shall must~~ be elected by its members by ballot *or acclamation* for terms not to exceed 3 years and ~~shall~~ hold office until their respective successors are elected and have qualified.

(2) ~~No~~ An individual ~~shall~~ *may not* serve as a director unless *the individual is* a member of the insurer.”

Section 12. Section 33-18-605, MCA, is amended to read:

“33-18-605. Use of credit information. (1) An insurer authorized to do business in this state that uses credit information to underwrite or rate risks may not:

(a) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

(b) deny, cancel, or not renew a policy of personal insurance on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (1)(a);

(c) base an insured’s renewal rates for personal insurance upon credit information without consideration of any other applicable factor independent of credit information;

(d) take an adverse action against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information;

(e) consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(i) treats the consumer as otherwise approved by the commissioner if the insurer presents information that the absence or inability relates to the risk for the insurer;

(ii) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or

(iii) excludes the use of credit information as a factor and uses only other underwriting criteria;

(f) take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewal is issued;

(g) use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection (1)(g):

(i) at annual renewal, upon the request of a consumer or the consumer’s agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in *this* subsection (1)(g), if consistent with its underwriting guidelines;

(iii) an insurer may but does not have to obtain current credit information for an insured, despite the requirements of subsection (1)(g)(i), if one of the following applies:

(A) the insurer is treating the consumer as otherwise approved by the commissioner;

(B) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers;

(C) credit was not used for underwriting or rating the insured when the policy was initially written;

(D) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon other underwriting or rating factors, excluding credit information.

(h) use a credit *report or an insurance* score that treats any of the following as a negative factor for the purpose of underwriting or rating a policy of personal insurance:

(i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information;

(ii) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(iii) collection accounts with a medical industry code, if so identified on the consumer's credit report;

(iv) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;

(v) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

(vi) the number of credit inquiries;

(vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;

(viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both.

(ix) the consumer's total available line of credit or total debt. However, an insurer may consider:

(A) the consumer's bill payment history on the debt; or

(B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.

(2) (a) An insurer shall, on written request from an applicant or an insured, provide reasonable underwriting or rating exceptions for a consumer whose credit report has been directly affected by an extraordinary event.

(b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.

(c) An insurer may also consider granting an exception to a consumer for an extraordinary event not listed in this section.

(d) An insurer may not be considered to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (2).

(e) As used in this subsection (2), "extraordinary event" means:

(i) expenses related to a catastrophic injury or illness;

- (ii) temporary loss of employment;
- (iii) death of an immediate family member; or
- (iv) theft of identity pursuant to 45-6-332.”

Section 13. Section 33-22-508, MCA, is amended to read:

“33-22-508. Conversion on termination of eligibility. (1) A group disability insurance policy or certificate of insurance ~~delivered or issued for delivery or renewed after October 1, 1981,~~ must contain a provision that if the insurance or any portion of the insurance on a person or the person’s dependents or family members covered under the policy ceases because of termination of the person’s membership in a group eligible for coverage under the policy, because of termination of the person’s employment, as a result of a person’s employer discontinuing the employer’s business, or as a result of a person’s employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and ~~the person~~ is not insured under another major medical disability insurance policy or plan, the person is entitled to have issued to the person by the insurer, without evidence of insurability, group disability coverage or an individual disability policy or, in the absence of an individual disability policy issued by the insurer, a group disability policy issued by the insurer on the person or on the person’s dependents or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of the group coverage.

(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsections (5) and (6). The conversion carrier must be authorized to act as an insurer in this state, and the commissioner shall approve the conversion policies pursuant to 33-1-501.

(3) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. In addition, the insurer or conversion carrier shall make available a conversion policy as required by subsection (6).

(4) The premium for the individual policy or group policy must be at no more than 200% of the insurer’s customary rate applicable to the group policy being terminated at the time of the conversion. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate of the policy being terminated at the time of the conversion. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(5) A conversion carrier shall offer an individual or group conversion policy that provides the same schedule of benefits and covers the same eligible expenses as those being terminated. The premium for the policy must be calculated as described in subsection (4).

(6) The insurer or conversion carrier shall also make available a conversion policy, certificate, or membership contract that provides at least the level of benefits provided by the insurer’s lowest cost basic health benefit plan, as defined in 33-22-1803. ~~If the insurer or conversion carrier is not a small employer carrier under part 18, the insurer shall make available a conversion policy, certificate, or membership contract that provides equivalent benefits to a basic health benefit plan as provided in 33-22-1827.~~ The conversion rate may not

exceed 150% of the highest rate charged for that plan. This subsection does not apply to disability plans that provide only excepted benefits as defined in 33-22-140.

(7) The effective date and time of the conversion policy must be established to ensure that there is no break in coverage between the termination of the group policy coverage and the inception of the conversion policy.”

Section 14. Section 33-22-1803, MCA, is amended to read:

“33-22-1803. Definitions. As used in this part, the following definitions apply:

(1) “Actuarial certification” means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person’s examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) “Affiliate” or “affiliated” means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) “Assessable carrier” means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) “Base premium rate” means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) “Basic health benefit plan” means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier’s standard benefit plan ~~and that provides the benefits required by 33-22-1827.~~

(6) “Benefit value” means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual’s maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

(7) “Bona fide association” means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in good faith for purposes other than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(8) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(9) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(10) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(11) "Dependent" means:

(a) a spouse;

(b) an unmarried child under 25 years of age:

(i) who is not an employee eligible for coverage under a group health plan offered by the child's employer for which the child's premium contribution amount is no greater than the premium amount for coverage as a dependent under a parent's individual or group health plan;

(ii) who is not a named subscriber, insured, enrollee, or covered individual under any other individual health insurance coverage, group health plan, government plan, church plan, or group health insurance;

(iii) who is not entitled to benefits under 42 U.S.C. 1395, et seq.; and

(iv) for whom the parent has requested coverage;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(12) (a) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term also includes those persons eligible for coverage under 2-18-704.

(b) The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) “Established geographic service area” means a geographic area, as approved by the commissioner and based on the carrier’s certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) (a) “Health benefit plan” means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract.

(b) The term does not include coverage of excepted benefits, as defined in 33-22-140, if coverage is provided under a separate policy, certificate, or contract of insurance.

(15) “Index rate” means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) “New business premium rate” means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(17) “Premium” means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(18) “Rating period” means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(19) “Restricted network provision” means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(20) “Small employer” means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least two but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

- (a) are affiliated companies;
- (b) are eligible to file a combined tax return for purposes of state taxation; or
- (c) are members of a bona fide association.

(21) “Small employer carrier” means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(22) “Standard health benefit plan” means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828.”

Section 15. Section 33-22-1821, MCA, is amended to read:

“33-22-1821. Waiver of certain laws. ~~Except as provided in 33-22-1827, a~~ A small employer carrier may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from a basic health benefit plan delivered or issued for delivery in this state.”

Section 16. Section 33-22-2002, MCA, is amended to read:

“33-22-2002. Small business health insurance pool — definitions. As used in this part, the following definitions apply:

(1) “Board” means the board of directors of the small business health insurance pool as provided for in 33-22-2003.

(2) “Dependent” has the meaning provided in 33-22-1803.

(3) (a) “Eligible small employer” means an employer who is sponsoring or will sponsor a group health plan and who employed at least two but not more than nine employees during the preceding calendar year and who employs at least two but not more than nine employees on the first day of the plan year.

(b) The term includes small employers who obtain group health plan coverage through a qualified association health plan.

(4) “Employee” means an eligible employee as defined in 33-22-1803.

(5) “Group health plan” ~~has the meaning provided in 33-22-140.~~ *means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.*

(6) “Premium” means the amount of money that a health insurance issuer charges to provide coverage under a group health plan.

(7) “Premium assistance payment” means a payment provided for in 33-22-2006 on behalf of employees who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the purchasing pool or through qualified association health plans.

(8) “Premium incentive payment” means a payment provided for in 33-22-2007(1)(b) to eligible small employers who qualify under 33-22-2007 to be applied to premiums paid on a monthly basis for group health plan coverage obtained through the purchasing pool or through qualified association health plans.

(9) “Purchasing pool” means the small business health insurance pool.

(10) “Qualified association health plan” means a plan established by an association whose members consist of employers who sponsor group health plans for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to applicable employer group health insurance law and must receive approval from the commissioner to operate as a qualified association health plan for the purposes of this part.

(11) “Related employers” means ~~persons having a relationship as described in section 267 of the Internal Revenue Code, 26 U.S.C. 267:~~

(a) *affiliates or affiliated entities or persons who directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with a specified entity or person; and*

(b) *entities or persons that are eligible to file a combined or joint tax return for purposes of state taxation.*

(12) “Tax credit” means a refundable tax credit as provided for in 33-22-2008.

(13) "Tax year" means the taxpayer's tax year for federal income tax purposes."

Section 17. Section 33-22-2004, MCA, is amended to read:

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

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

(c) upon *timely* reapplication, give priority to employers and their employees who are already receiving the premium incentive payments and premium assistance payments; *If the reapplication is more than 30 days late, the priority will not be given and the employer will be added to the waiting list provided for in 33-22-2008.*

(d) upon *timely* reapplication *as provided in subsection (1)(c)*, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

(e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive or premium assistance payment;

(f) adopt a premium incentive payment schedule that is based on a percentage of the employer's share of the premium and apply the schedule uniformly to all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;

(g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or, with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for employees;

(h) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan or qualified association health plan. However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

(i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

(j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

(k) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;

(l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

(m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

(n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;

(o) comply with the participation requirements provided for in 33-22-1811;

(p) meet at least four times annually; and

(q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.

(2) The board may:

(a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for employers;

(f) at least 30 days before the end of the current fiscal year, request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the department of revenue for reimbursement of the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a fiscal year;

(g) at least 90 days before the end of the current fiscal year, request that funds be transferred from the funds allocated for tax credits to the funds appropriated for premium incentive payments and premium assistance payments if the number of eligible small employers seeking tax credits is insufficient to exhaust at least 90% of the funds allocated for tax credits during a fiscal year;

(h) seek other federal, state, and private funding sources;

(i) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

(j) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of employees, collect the

employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

(k) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

(l) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage.”

Section 18. Section 33-22-2006, MCA, is amended to read:

“33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid — eligibility for small group coverage — amounts. (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan that meets the requirements of creditable coverage for the employer’s and any related employer’s employees;

(c) do not have delinquent state income tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and

(e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than \$75,000 in wages, as defined in 39-71-123, from the small employer or related employer in the prior tax year.

(2) An owner, partner, or shareholder of a business who received more than \$75,000 in wages, as defined in 39-71-123, and those individuals’ spouses who are employees are not eligible under this chapter for:

(a) any premium assistance payment. However, a premium incentive payment may be made for the premium share paid by the business for group health insurance coverage for:

(i) the owner, partner, or shareholder;

(ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or

(iii) dependents of those listed in subsection (2)(a)(i).

(b) a tax credit for group health insurance premiums paid by the business or the owner, partner, or shareholder for group health insurance coverage for the individual or the individual’s dependents.

(3) An employee, including an owner, partner, or shareholder or any dependent of an employee, who is also eligible for the children’s health insurance program provided for under Title 53, chapter 4, part 10, or medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance payment.

(4) The commissioner shall establish, by rule, the maximum number of employees that may be employed to qualify as a small employer under subsection (1). However, the number may not be less than two employees or more than nine employees. The maximum number may be different for

employers seeking premium incentive payments and premium assistance payments than for employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under this part. The commissioner may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not disqualify registered employers with respect to the tax year for which the employer has registered.

(5) Except as provided in subsection (6), an eligible small employer may claim a tax credit in the following amounts:

(a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age; or

(ii) not more than \$125 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and

(b) not more than \$40 each month for each dependent, other than the employee's spouse, if the employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition to the employee's spouse.

(6) An employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

(c) for premiums for which a deduction is claimed under 15-30-2131 or 15-31-114.

(7) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group."

Section 19. Section 33-22-2008, MCA, is amended to read:

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

(b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.

~~(c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each year.~~

~~(d)~~(c) The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.

(e)(d) A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in 33-22-2006 as the maximum number of employees an employer may have in order to qualify for registration for the time period in question.

(f)(e) An employer's decision to apply for premium incentive payments and premium assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association health plan renews its registration, whichever time period is less. An employer may choose to discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any time.

(2) The commissioner shall register qualifying eligible small employers in the order in which applications are received and according to whether or not the application is for premium incentive payments and premium assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and maintain premium incentive payments and premium assistance payments for eligible small employers who have not sponsored group health plans that provide creditable coverage in the previous 2 years and who chose to join the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated to tax credits for eligible small employers who currently sponsor a small group health plan that provides creditable coverage. Funding may be transferred from the allocated fund for premium incentive payments and premium assistance payments to the general fund for tax credits or from the funds allocated for tax credits to the allocated fund for premium incentive payments and premium assistance payments if the board requests the transfer as provided in 33-22-2004 and the commissioner approves the request.

(3) (a) The maximum number of eligible small employers is reached when the anticipated amount of claims for premium incentive payments and premium assistance payments and tax credits has reached 95% of the amount of money allocated for premium incentive payments and premium assistance payments and tax credits.

(b) The commissioner may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of money or because the maximum number of eligible small employers has been reached.

(c) The commissioner shall mail to each employer registered under this section a notice of registration containing a unique registration number and indicating eligibility for either premium incentive payments and premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker, or other evidence of participation that may be publicly posted.

(d) The commissioner shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(4) A prospective participant shall apply for registration on a form provided by the commissioner. The prospective participant shall:

(a) provide the number of employees and whether the employer qualifies under 33-22-2006;

(b) provide information that is necessary to estimate the amount of the premium incentive payments and premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;

(c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or eligible qualified association health plan coverage;

(d) indicate whether or not the employer previously sponsored a group health plan that provided creditable coverage and, if so, when and for how long; and

(e) provide any additional information determined by the commissioner to be necessary to support an application.

(5) Each year, small employer participants shall *timely* reregister with the commissioner in order to determine the participant's continued eligibility. *The commissioner shall accept applications for continued registration:*

(a) for purchasing pool participants at any time within 12 months of the initial registration approval or within the time period for renewal of the coverage under this part, whichever is longer;

(b) for tax credit participants on December 1 of each year. The commissioner shall stop accepting renewal applications for tax credit participants 60 calendar days later.

(6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

(7) If the department of public health and human services receives approval for a section 1115 waiver as provided in 53-2-216, the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions."

Section 20. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing — authority. (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers' compensation insurance on a direct basis; and

(e) a protected cell captive insurance company may not insure any risks other than those of its ~~participant-affiliated companies and controlled unaffiliated business entities~~ *participants*.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) ~~(i)~~ it appoints a registered agent to accept service of process;

~~(ii)~~ *files* the name and contact information and any subsequent changes regarding the registered agent ~~are filed~~ with the commissioner; and

~~(iii)~~ *it* agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a business entity:

(A) file with the commissioner a certified copy of its organizational documents, a statement under oath of an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) ~~In the event of any~~ *If there is* a subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until *the commissioner approves* a revision of the description ~~is approved by the commissioner~~. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

- (i) the amount and liquidity of its assets relative to the risks to be assumed;
- (ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;
- (iii) the overall soundness of its plan of operation;
- (iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and
- (v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

- (i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;
- (ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;
- (iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and
- (iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

- (i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;
- (ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the

information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of \$300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter.”

Section 21. Section 33-28-107, MCA, is amended to read:

“33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) Except as provided in subsection (2)(b), on or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers.

(b) A pure captive insurance company, branch captive insurance company, or industrial insured captive company, excluding captive risk retention groups, may make written application for filing the required report on a fiscal yearend basis. If an alternative reporting date is granted:

(i) the required report is due 60 days after fiscal yearend; and

(ii) in order to provide sufficient information to support the premium tax return, a pure captive insurance company or industrial insured insurance company shall file a report acceptable to the commissioner prior to March 1 of each year for the prior calendar yearend.

(c) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

(d) On or before March 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

(3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

(4) (a) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a captive risk retention

group may file using generally accepted accounting principles. The filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner.

~~(b) The commissioner may waive the RBC report required in 33-2-1903 for a captive risk retention group that files a report or statement pursuant to subsection (4)(a) or for a captive risk retention group that was formed in the last 2 years.~~

~~(e)(b) The filings in subsection (4)(a) are required on an annual and quarterly basis."~~

Section 22. Section 33-28-108, MCA, is amended to read:

"33-28-108. Examinations and investigations. (1) (a) ~~At least once in 3 years, or more frequently if the commissioner considers it prudent, the~~ *The* commissioner or some competent person appointed by the commissioner shall ~~visit each captive insurance company and thoroughly inspect and examine its the affairs, transactions, accounts, records, and assets of each captive insurance company as often as the commissioner considers advisable but no less frequently than every 5 years to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter.~~

~~(b) The commissioner, upon application and in the commissioner's discretion, may enlarge the 3-year period to 5 years if the captive insurance company is:~~

~~(i) subject to a comprehensive annual audit during the 5-year period of a scope satisfactory to the commissioner; and~~

~~(ii) the audit is conducted by independent auditors approved by the commissioner.~~

~~(e)(b) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.~~

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Captive risk retention group reports produced pursuant to the examination requirements of this section are public writings as defined in 2-6-101.

(5) Except as provided in subsection (6), the provisions of this section apply to all business written by a captive insurance company.

(6) The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107(2)(d) to the satisfaction of the commissioner.

(7) As a condition of licensure of a branch captive insurance company, the foreign captive insurance company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance company in the jurisdiction in which the foreign captive insurance company is formed.”

Section 23. Section 33-28-207, MCA, is amended to read:

“33-28-207. Applicable laws. (1) The following apply to captive insurance companies:

(a) the definitions of commissioner and department provided in 33-1-202, property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) the limitation provided in 33-2-705 on the imposition of other taxes;

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13;

(d) the provisions of 33-1-311, 33-1-603, 33-3-431, 33-18-201, 33-18-203, 33-18-205, and 33-18-242; ~~and~~ *and*

(~~e~~)*(e)* the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6, *except that a pure captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and approval of the commissioner without following the provisions of Title 33, chapter 3, part 6.*

(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.*

(~~4~~)*(5)* Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies.”

Section 24. Repealer. The following sections of the Montana Code Annotated are repealed:

33-2-609. Excess deposits.

33-22-103. Violations.

33-22-1827. Benefits required in basic health benefit plan.

33-22-1828. Benefits required in standard benefit plan.

Section 25. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2011

CHAPTER NO. 228

[HB 279]

AN ACT PROVIDING DISASTER AND EMERGENCY SERVICES TO FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA; ALLOWING TRIBAL GOVERNMENTS TO REQUEST ASSISTANCE FROM THE GOVERNOR; AUTHORIZING EXPENDITURES WHEN JUSTIFIED BY A TRIBAL DISASTER OR EMERGENCY; REINSTATING SPENDING AUTHORITY WHEN EXPENDED FUNDS ARE RECOVERED; PROVIDING ASSISTANCE IN OBTAINING FEDERAL COMMUNITY DISASTER LOANS FOR TRIBAL GOVERNMENTS; PROVIDING FOR DEBRIS AND WRECKAGE REMOVAL FOR TRIBAL GOVERNMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-105, 10-3-310, 10-3-311, 10-3-313, 10-3-314, AND 10-3-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-3-101, MCA, is amended to read:

“10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to ensure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or human-caused disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, ~~and~~ local governments, *and tribal governments* in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, mitigation, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state, ~~and~~ its political subdivisions, *and tribal governments* may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state, *tribal government*, or federal emergency or disaster declarations."

Section 2. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Disaster medicine" means the provision of patient care by a health care provider during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and treatment of persons needing care.

(6) "Division" means the division of disaster and emergency services of the department.

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

(8) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

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

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

(11) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

(12) "*Tribal government*" means the government of a federally recognized Indian tribe within the state of Montana.

~~(12)~~(13) "Volunteer professional" means an individual with an active, unrestricted license to practice a profession under the provisions of Title 37, Title 50, or the laws of another state."

Section 3. Section 10-3-105, MCA, is amended to read:

"10-3-105. Division of disaster and emergency services — duties. (1) A division of disaster and emergency services is established in the department. The division must have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, *tribal governments*, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, *tribal governments*, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor.”

Section 4. Section 10-3-310, MCA, is amended to read:

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

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

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

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

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

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident response costs of the state and may not be used to reimburse a local government or *tribal government* for incident response costs incurred by that local government or *tribal government*.

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

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

Section 5. Section 10-3-311, MCA, is amended to read:

“10-3-311. Emergency or disaster expenditures — restrictions. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is

declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, ~~which that~~ results in damage to the works, buildings, or property of the state, ~~or any political subdivision thereof of the state, or a tribal government or which that~~ menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, *including an Indian reservation*, upon demonstration by the political jurisdiction, *including a tribal government*, that:

(a) ~~such the~~ political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in a sufficient amount to meet the emergency or disaster; or

(c) federal funds available for ~~such the~~ emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) ~~No expenditures~~ *Expenditures* for flood-related damages may *not* be made to assist a political subdivision *or tribal government* that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 CFR, and does not have in effect adequate regulations for ~~such those~~ areas or has failed to enforce ~~such~~ regulations as required by the national flood insurance program.

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

~~(3)~~(4) The governor is charged with the implementation of the program.

~~(4)~~(5) The administration and development of rules for implementation of this section must be promulgated by the department.”

Section 6. Section 10-3-313, MCA, is amended to read:

“10-3-313. Temporary housing for disaster victims — site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make the units available to any political subdivision of the state *or to any tribal government*;

(b) to assist any political subdivision of this state *or any tribal government* that is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) “passing through” funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision *or tribal government* for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under regulations that the governor prescribes, to temporarily suspend or modify for not to exceed 60 days any state laws or regulations relating to public health, safety, zoning, or transportation, within or across the state, when

by proclamation the governor declares the suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, that are necessary to prepare or equip the sites to utilize the housing units.

(3) Parts 1 through 4 of this chapter may not be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery."

Section 7. Section 10-3-314, MCA, is amended to read:

"10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon the governor's determination that a political subdivision of the state *or that a tribal government* will suffer a substantial loss of tax and other revenue from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision *or tribal government*, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision *or tribal government*.

(2) to determine the amount needed by any applicant political subdivision *or tribal government* to restore or resume its governmental functions and to certify the same to the federal government. However, the application amount may not exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenue of the political subdivision *or tribal government* is insufficient to meet its operating expenses, including additional emergency-related or disaster-related expenses of the political subdivision *or tribal government*."

Section 8. Section 10-3-315, MCA, is amended to read:

"10-3-315. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage ~~which~~ *that* may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize ~~such~~ *the* funds to make grants to any political subdivision *or tribal government* for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section ~~shall~~ *may* not be exercised unless the affected political subdivision, *tribal government*, corporation, organization, or individual ~~shall~~ first ~~present~~ *presents* an unconditional authorization for removal of ~~such~~ *the* debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, ~~shall~~ first ~~agree~~ *agrees* to indemnify the state government against any claim arising from ~~such~~ *the* removal.

(b) Whenever the governor provides for ~~clearance~~ *the clearing* of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or ~~clearance~~ *clearing* operation.”

Section 9. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2011

CHAPTER NO. 229

[HB 469]

AN ACT CLARIFYING AND SIMPLIFYING THE NAME OF THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD; AMENDING SECTIONS 2-15-3110, 2-15-3111, 2-15-3112, 2-15-3113, AND 81-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature has been made aware that the name of the Livestock Loss Reduction and Mitigation Board is too long, too confusing, and does not adequately communicate the mission of the Board to the public; and

WHEREAS, the Legislature has been asked by Montana citizens to change the name of the Montana Livestock Loss Reduction and Mitigation Board to something simpler and better representative of the Board's public purpose; and

WHEREAS, the Legislature finds that it would be beneficial to the Board's mission and duties as that mission and duties are set forth in state law to change the name of the Livestock Loss Reduction and Mitigation Board to something simpler.

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

Section 1. Section 2-15-3110, MCA, is amended to read:

“2-15-3110. Livestock loss reduction and mitigation board — purpose, membership, and qualifications. (1) There is a livestock loss ~~reduction and mitigation~~ board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, wildlife, and parks commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

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

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111.”

Section 2. Section 2-15-3111, MCA, is amended to read:

“2-15-3111. Livestock loss reduction program. The livestock loss ~~reduction and mitigation~~ board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf predation on livestock, including:

(1) eligibility requirements for program participation;

(2) application procedures for program participation and procedures for awarding grants for wolf predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures, including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts, and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant.”

Section 3. Section 2-15-3112, MCA, is amended to read:

“2-15-3112. Livestock loss mitigation program — definitions. The livestock loss reduction and mitigation board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, 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 to cattle, swine, horses, mules, sheep, goats, llamas, and livestock guard animals on state, federal, and private land and on tribal land that is eligible through agreement pursuant to 2-15-3113(2).

(2) Confirmed and probable livestock losses must be reimbursed at an amount not to exceed fair market value as determined by the board.

(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 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) 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. 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. The board shall hold a hearing on the 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) 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, including but not limited to the presence of bite marks indicative of the spacing of canine tooth punctures of wolves 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 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;

(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;

(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.

(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."

Section 4. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss reduction and mitigation board. (1) The livestock loss reduction and mitigation board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss reduction and mitigation board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss reduction and mitigation board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.”

Section 5. Section 81-1-110, MCA, is amended to read:

“81-1-110. Livestock loss reduction and mitigation accounts. (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, except those appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of 2-15-3111 through 2-15-3113 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of 2-15-3112.

(3) The livestock loss ~~reduction and mitigation~~ board may spend funds in the accounts only to carry out the provisions of 2-15-3111 through 2-15-3113.”

Section 6. Name change — directions to code commissioner. Wherever a reference to the “livestock loss reduction and mitigation board” appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change it to a reference to the “livestock loss board”.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2011

CHAPTER NO. 230

[HB 548]

AN ACT REGARDING REVOCATION OF SUSPENSION OR DEFERRAL OF A CRIMINAL SENTENCE; PROVIDING THAT A PETITION FOR REVOCATION MAY BE FILED WITH A COURT EITHER BEFORE THE

PERIOD OF SUSPENSION OR DEFERRAL BEGINS TO RUN OR DURING THE PERIOD OF SUSPENSION OR DEFERRAL; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION.

WHEREAS, the Montana Supreme Court, in its opinion in *State v. Stiffarm* (2011) held that a petition for revocation of a suspended or deferred imposition of sentence must be filed during the period of suspension or deferral; and

WHEREAS, in its ruling in *Stiffarm*, the Supreme Court overruled several of its prior decisions allowing the filing of a petition for revocation before the period of suspension or deferral began; and

WHEREAS, in *Stiffarm*, the Supreme Court invited the Legislature to examine the issue and confirm or change the language of section 46-18-203(2), MCA, requiring that the petition be filed during the period of suspension or deferral; and

WHEREAS, the purpose of this legislation is to respond to the Court's invitation in *Stiffarm* by continuing the practice allowed by the Supreme Court's past decisions of allowing a petition for revocation to be filed either before or after a defendant begins serving the period of suspension or deferral but not later than the end of that period of suspension or deferral.

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)(c), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court ~~during~~ *either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired.* Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender's own behalf;
- (c) the opportunity to question adverse witnesses; and
- (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified; unless:

- (a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

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

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all past revocations, regardless of the date when a deferred or suspended sentence was ordered and regardless of the date of revocation.

Approved April 20, 2011

CHAPTER NO. 231

[HB 584]

AN ACT REVISING LICENSE PLATE LAWS; ALLOWING NEW STANDARD LICENSE PLATES TO BE OF CERTAIN PRIOR DESIGNS; AMENDING SECTIONS 61-3-301 AND 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, 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) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must have a single license plate displayed on the rear of the vehicle. A custom vehicle or 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. All other motor vehicles must have one license plate displayed on the front and one license plate displayed on the rear of the motor vehicle.

(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.

(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) display a prior design of standard license plates including military, veteran, and amateur radio license plates, or any license plates that have been issued for 5 or more years after the replacement of the license plates is required under 61-3-332(3)(a), except as provided in 61-3-332(3)(c) and (3)(d), 61-3-448, or 61-3-468.~~

(4) For the purposes of this section, “conspicuously displayed” means that the required license plates are obviously visible and firmly attached to:

(a) the front bumper and the rear bumper of a motor vehicle equipped with front and rear bumpers, except for a custom vehicle or street rod as provided in subsection (1)(b); *or*

(b) a clearly visible location on the rear of a trailer, semitrailer, pole trailer, or travel trailer.”

Section 2. Section 61-3-332, MCA, is amended to read:

“61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word “permanent” on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) ~~Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates. New license plates issued under 61-3-303 or this section must be a standard license plate design first issued within the last 35 years or current collegiate or generic specialty license plate designs. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.~~

~~(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty new license plate plates if, upon renewal of registration under 61-3-332 this section, the license plates are 5 or more years old or will become older than 5 years during the registration period.~~

~~(iii) License New license plates must be issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315.~~

~~(iii) Until January 1, 2015, and upon payment of the fee required in 61-3-321(12)(b), a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.~~

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor

vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 3. Effective date. [This act] is effective January 1, 2012.

Approved April 20, 2011

CHAPTER NO. 232

[SB 28]

AN ACT CLARIFYING THAT MENTAL HEALTH DIVERSION GRANT AWARDS ARE BASED ON ADMISSIONS TO THE MONTANA STATE HOSPITAL; AMENDING SECTION 53-21-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-21-1203, MCA, is amended to read:

“53-21-1203. State matching fund grants for county crisis intervention, jail diversion, precommitment, and short-term inpatient treatment costs. (1) As soon as possible after July 1 of each year, from funds appropriated by the legislature for the purposes of this section, the department shall grant to each eligible county state matching funds for:

(a) jail diversion and crisis intervention services to implement 53-21-1201 and 53-21-1202;

(b) insurance coverage against catastrophic precommitment costs; if a county insurance pool is established pursuant to 2-9-211; and

(c) short-term inpatient treatment.

(2) Grant amounts must be based on available funding and the prospects that a county or multicounty plan submitted pursuant to subsection (3) will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention and evaluation and ultimately result in cost savings to the state. The department shall develop a sliding scale for state grants based upon the historical county use of the state hospital with a high-use county receiving a lower percentage of matching funds. The sliding scale must be based upon the number of ~~commitments~~ *admissions* by county compared to total ~~commitments~~ *admissions* and upon the population of each county compared to the state population.

(3) In order to be eligible for the state matching funds, a county shall, in the time and manner prescribed by the department:

(a) apply for the funds and include in the grant application a detailed plan for how the county and other local entities will collaborate and commit local funds for the mental health services listed in subsection (1);

(b) develop and submit to the department a county or multicounty jail diversion and crisis intervention services strategic plan pursuant to 53-21-1201 and 53-21-1202, including a plan for community-based or regional emergency and court-ordered detention and examination services and short-term inpatient treatment;

(c) participate in a statewide or regional county insurance plan for precommitment costs under 53-21-132, if a statewide or regional insurance plan has been established, as authorized under 2-9-211;

(d) participate in a statewide or regional jail suicide prevention program, if one has been established by the department for the state or for the region in which the county is situated; and

(e) collect and report data and information on county jail diversion, crisis intervention, and short-term inpatient treatment services in the form and manner prescribed by the department to support program evaluation and measure progress on performance goals.

(4) The department shall adopt rules ~~by August 1, 2009, by August 1, 2011,~~ to implement the provisions of this section.”

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

Approved April 20, 2011

CHAPTER NO. 233

[SB 43]

AN ACT REVISING LAWS RELATED TO PRIMITIVE PARKS; REVISING THE LIST OF PRIMITIVE PARKS; REVISING THE TYPES OF DEVELOPMENT THAT MAY OCCUR IN PRIMITIVE PARKS; AND AMENDING SECTIONS 23-1-116, 23-1-117, AND 23-1-118, MCA.

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

Section 1. Section 23-1-116, MCA, is amended to read:

“23-1-116. Primitive parks established. Because of their unique and primarily undeveloped character, the following state parks and management areas are designated as primitive parks and are subject to the provisions of 23-1-115 through 23-1-118:

- ~~(1) Big Pine management area;~~
- ~~(2) Thompson Falls state park;~~
- ~~(3)~~(1) Wild Horse Island state park;
- (2) *Big Pine management area;*
- (3) *Sluice Boxes state park;*
- (4) *Headwaters state park;*
- ~~(4) Lost Creek state park;~~
- ~~(5) Painted Rocks state park;~~
- ~~(6) Aekley Lake state park;~~
- ~~(7) Sluice Boxes state park;~~
- ~~(8) Deadman's Basin state park;~~
- ~~(9)~~(5) Pirogue Island state park;
- ~~(10)~~(6) Medicine Rocks state park;
- ~~(11) Headwaters state park;~~
- ~~(12)~~(7) Council Grove state park;
- ~~(13)~~(8) Beaverhead Rock state park;
- ~~(14) Natural Bridge state park; and~~
- (9) *Tower Rock state park; and*
- ~~(15)~~(10) Madison Buffalo Jump state park.”

Section 2. Section 23-1-117, MCA, is amended to read:

“23-1-117. Limit on development of primitive parks. (1) ~~Except as permitted in Lost Creek state park for the limited purposes provided in subsection (3), the~~ *The only development allowed in primitive parks designated in 23-1-116 is:*

- (a) ~~necessary~~ *necessary* improvements ~~required to meet minimum public health standards regarding~~ *required to meet minimum public health standards regarding* sanitation, which may include ~~necessary~~ *necessary* access to outhouses, *septic* vaults, and water;

(b) ~~improvements necessary to ensure the~~ *improvements necessary to ensure the safe public use of existing use of boat ramps and docks;*

(c) addition of gravel to existing unpaved roads and the resurfacing of paved roads when necessary to ensure safe public access;

(d) establishment of new ~~hiking~~ trails or improvement of ~~existing hiking~~ trails; ~~and~~

(e) *development of camp host pads, which may include a septic vault and electrical service designed to serve only the camp host pads;*

(f) *any measures required for land management, including forestry; and*

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

(2) The following development of designated primitive parks is prohibited:

(a) installation of electric lines or facilities, except when necessary to comply with subsection (1)(a) or (1)(e);

(b) installation of recreational vehicle sanitary dumpsites where they do not presently exist; and

(c) creation of *unnecessary* new roads and paving of existing but previously unpaved roads.

(3) ~~Lost Creek state park may be developed to include a camp host pad, with necessary water, electric, and sewage disposal facilities to meet minimum public health standards for the camp host. The camp host pad must be completed by September 30, 2007, and must be accomplished in the least intrusive manner possible in order to retain the primitive character of Lost Creek state park as a whole, in keeping with the spirit of the Montana Primitive Parks Act."~~

Section 3. Section 23-1-118, MCA, is amended to read:

"23-1-118. Elimination of resident user fee — fee for nonresident use — penalty. (1) In recognition of the right of Montana residents to use primitive parks without regard to their ability to pay, a Montana resident is not required to pay a user fee for the use of any primitive park designated in 23-1-116, ~~except that the department may charge camping fees at Thompson Falls state park and Headwaters state park, except that the department may charge camping fees at Headwaters state park.~~

(2) A nonresident who wishes to use a primitive park is required to pay the state park user fees chargeable under 23-1-105."

Approved April 20, 2011

CHAPTER NO. 234

[SB 52]

AN ACT PROHIBITING THE LEGISLATIVE AUDITOR FROM EMPLOYING AN AUDITOR UNLESS A BACKGROUND CHECK IS MADE ON THE PROSPECTIVE EMPLOYEE; PROHIBITING THE LEGISLATIVE AUDITOR FROM EMPLOYING A PERSON IF THE LEGISLATIVE AUDITOR DETERMINES THAT THE PERSON IS NOT APPROPRIATE FOR

EMPLOYMENT BY THE AUDITOR; AND AMENDING SECTION 5-13-305, MCA.

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

Section 1. Section 5-13-305, MCA, is amended to read:

“5-13-305. Employees, consultants, and legal counsel — *background checks — cure for impairment.* (1) The legislative auditor may appoint and define the duties of employees and consultants who are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations. The legislative auditor shall set the pay for employees in accordance with the rules for classification and pay adopted by the legislative council. The legislative auditor may employ legal counsel to conduct proceedings under this chapter.

(2) (a) *The legislative auditor may not employ a prospective employee to conduct or supervise audits without conducting or having conducted a background check on the prospective employee. The background check must include a state and federal fingerprint-based check by the Montana department of justice and the federal bureau of investigation. When reporting the results of the background check, the Montana department of justice shall specifically report any previous conviction of the prospective employee for embezzlement or other financial crimes. The purpose of the background and fingerprint checks is to determine whether the prospective employee is an appropriate person to audit the records of one or more state agencies or programs.*

(b) *A copy of the results of the background check must be delivered to the legislative auditor. If the legislative auditor determines, based upon the results of the background and fingerprint checks, that a prospective employee is not an appropriate person to audit one or more state agencies or programs, the legislative auditor may not employ the prospective employee.*

(2)(3) *The legislative auditor shall inform the legislative council and the legislative audit committee in writing of an administrative policy or rule adopted under 5-11-105 that may impair the independence of the division, along with a statement of the reasons for the opinion and suggested changes to cure the impairment. The legislative council shall review the rule in question and adopt a revision that is generally applicable to the legislative branch and that is designed to cure the impairment. While the impairment exists, the legislative audit committee may adopt a specific exemption to the questioned rule that states the alternative rule to be employed under the exemption.”*

Approved April 20, 2011

CHAPTER NO. 235

[SB 68]

AN ACT CLARIFYING A DRIVER'S DUTY TO REMAIN AT THE SCENE OF AN ACCIDENT OR COLLISION INVOLVING DEATH, PERSONAL INJURY, OR DAMAGE TO A VEHICLE; CLARIFYING THE DRIVER'S DUTY TO PROVIDE CERTAIN INFORMATION AND RENDER AID; CLARIFYING THE PENALTIES FOR CERTAIN VIOLATIONS INVOLVING THE INJURY, SERIOUS BODILY INJURY, OR DEATH OF A PERSON OR THE STRIKING OF THE BODY OF A DECEASED PERSON; AMENDING SECTIONS 61-5-405, 61-7-101, 61-7-103, 61-7-105, 61-7-108, AND 61-7-118, MCA; AND REPEALING SECTION 61-7-104, MCA.

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

Section 1. Section 61-5-405, MCA, is amended to read:

“61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d), of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, the definition of felony as provided in 45-2-101, and ~~61-7-103~~ *61-7-105*, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303);

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or

(c) convictions of careless driving resulting in death or reckless driving resulting in death.

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver’s license or driving privilege of the individual as may be required elsewhere in this title.”

Section 2. Section 61-7-101, MCA, is amended to read:

“61-7-101. Short title — definition. (1) This part will be cited as the “Uniform Accident Reporting Act”.

(2) *As used in this part, “accident” means any event in which a vehicle collides with any object, person, deceased person, or animal or any event in which a person is injured or killed or property damage is caused as a result of at least one vehicle’s movement.*”

Section 3. Section 61-7-103, MCA, is amended to read:

“61-7-103. Accidents involving ~~death or personal injuries another person or deceased person.~~ (1) The driver of any vehicle *who knows or reasonably should have known that the driver has been involved* in an accident ~~resulting in injury to or death of any person with another person or a deceased person~~ shall immediately stop the vehicle at the scene of the accident or as close to the accident as possible but shall then return to and in every event remain at the scene of the accident until the driver has fulfilled the requirements of 61-7-105. Each stop at the scene of the accident must be made without obstructing traffic more than is necessary.

~~(2) (a) Except as provided in subsection (2)(b), a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment for a term of not less than 30 days or more than 1 year, by a fine of not less than \$100 or more than \$5,000, or by both fine and imprisonment.~~

~~(b) If the accident resulted in serious bodily injury or death of any person, a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, by a fine in an amount not to exceed \$50,000, or by both fine and imprisonment.~~

~~(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of a person convicted of violating this section for the period prescribed in 61-5-205."~~

Section 4. Section 61-7-105, MCA, is amended to read:

"61-7-105. Duty to give information and render aid. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle that is driven or attended by any person *required to stop pursuant to 61-7-103* shall:

(a) give the driver's name, address, and the registration number of the vehicle the driver is driving and shall upon request and if available show a driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with. ~~The driver shall,~~

(b) render to any person injured in the accident reasonable assistance, including the transporting or the making of arrangements for the transporting of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that the treatment is necessary or if transportation is requested by the injured person; and

(c) *if any person in the accident is injured, deceased, or otherwise incapacitated or if notice is required pursuant to 61-7-108, remain at the scene of the accident until an on-duty peace officer with authority to investigate the accident gives the driver express permission to leave. This subsection (1)(c) does not apply when the driver reasonably believes it is necessary to leave the scene in order to seek emergency medical care for any person involved in the accident or to give notice to authorities pursuant to 61-7-108.*

(2) *A driver may not delegate to another the duties imposed under this section."*

Section 5. Section 61-7-108, MCA, is amended to read:

"61-7-108. Immediate notice of accidents. The driver of a vehicle *who knows or reasonably should have known that the driver has been involved in an accident resulting in injury to or death of any person, striking the body of a deceased person, or property damage to an apparent extent of \$500 or more shall immediately by the quickest means of communication give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol."*

Section 6. Section 61-7-118, MCA, is amended to read:

"61-7-118. Penalty for violation. (1) *Except as provided in subsections (2) and (3), a person violating any provision of ~~61-7-104~~ 61-7-103, 61-7-105 through 61-7-110, or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than \$200 or more than \$300 or by imprisonment for not more than 20 days. For a second conviction within 1 year of the first conviction, the offender shall be punished by a fine of not less than \$300 or more than \$400, by imprisonment for not more than 30 days, or both. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than \$400 or more than \$500, by imprisonment for not more than 6 months, or both.*

(2) *A driver failing to comply with any provisions of 61-7-103 or 61-7-105 in an accident resulting in injury to any person shall upon conviction be punished by imprisonment for a term of not less than 30 days or more than 1 year, by a fine of not less than \$100 or more than \$5,000, or by both fine and imprisonment.*

(3) *A driver failing to comply with any provision of 61-7-103 or 61-7-105 in an accident resulting in serious bodily injury, as defined in 45-2-101, or death of any person or resulting in the driver striking the body of a deceased person shall upon conviction be punished by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, by a fine in an amount not to exceed \$50,000, or by both fine and imprisonment. Upon conviction, the department shall also revoke the driver's license, permit to drive, or any nonresident operating privilege for the period prescribed in 61-5-205.*

(2)(4) Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment must be commuted at the rate of 1 day's incarceration for each \$75 of the fine."

Section 7. Repealer. The following section of the Montana Code Annotated is repealed:

61-7-104. Accident involving damage to vehicle.

Approved April 20, 2011

CHAPTER NO. 236

[SB 120]

AN ACT REQUIRING THAT CERTAIN INFORMATION ABOUT MEMBERS OF STATE AGENCY BOARDS, COMMITTEES, COMMISSIONS, AND ADVISORY COUNCILS BE PROVIDED FOR PUBLICATION IN OFFICIAL REPORTS AND BE PROVIDED ON WEBSITES; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. State agency board, committee, commission, or advisory council member information to be published. (1) Whenever a board, committee, commission, or advisory council of the executive, legislative, or judicial branch publishes a report, such as an audit report, program evaluation report, research report, or statutorily required report, the board, committee, commission, or advisory council shall publish in the report:

(a) the name of each board, committee, commission, or advisory council member;

(b) an address, telephone number, or e-mail address for each board, committee, commission, or advisory council member; and

(c) the term of each board, committee, commission, or advisory council member, including the date that the member's term expires.

(2) Each executive, legislative, and judicial branch board, committee, commission, or advisory council shall ensure that the information required under subsection (1) is readily available on a website.

(3) This section is not intended to apply to administrative documents, such as memoranda or letters.

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, 2011.

Approved April 20, 2011

CHAPTER NO. 237

[SB 278]

AN ACT PROVIDING FOR MEMBERSHIP SUBSCRIPTIONS FOR PRIVATE AIR AMBULANCE SERVICE; EXEMPTING CERTAIN PRIVATE AIR AMBULANCE SERVICES FROM INSURANCE LAWS; AMENDING SECTION 33-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, consumer expenses associated with life saving air ambulance service can be substantial and only a portion of the costs are typically eligible to be paid by insurers, leaving significant costs to the patient; and

WHEREAS, air ambulance service membership programs implemented in other states have provided protection to consumers from substantial out-of-pocket expenses for air ambulance services; and

WHEREAS, the Legislature believes it is appropriate to allow Montana consumers a choice on whether they want to participate in air ambulance service membership programs as a means to offset the costs of air ambulance services, while supporting the continued availability of these services in their communities.

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

Section 1. Private air ambulance service — findings — exemptions from insurance code. (1) The legislature finds that there is a need to assist Montana consumers with regard to the availability and affordability of air ambulance service.

(2) A private air ambulance service that solicits membership subscriptions, accepts membership applications, charges membership fees, and provides air ambulance services to subscription members and designated members of their households is not an insurer as defined in 33-1-201, a health carrier as defined in 33-36-103, a health service corporation as defined in 33-30-101, or a health maintenance organization as defined in 33-31-102 if the private air ambulance service:

- (a) is licensed in accordance with 50-6-306;
- (b) has been in operation in Montana for at least 2 years; and
- (c) has submitted evidence of its compliance with this section to the department.

(3) Any private air ambulance service membership program must have arrangements with other air ambulance service providers in Montana to the extent reasonably possible to ensure maximum geographic coverage within the state for the subscribers to the program.

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 or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) Except as otherwise provided in Title 33, chapter 22, this code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, 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 private air ambulance services that are in compliance with [section 1] 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.*

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 6, part 3, and the provisions of Title 50, chapter 6, part 3, apply to [section 1].

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

Approved April 20, 2011

CHAPTER NO. 238

[SB 337]

AN ACT REVISING PROBATE LAWS REGARDING PLEADINGS, EVIDENCE, AND SUPERVISED ADMINISTRATION; PROVIDING PROVISIONS RELATED TO UNSWORN STATEMENTS; REVISING PROVISIONS RELATED TO THE VERIFICATION OF PLEADINGS; REQUIRING THAT AN AFFIDAVIT OR VERIFIED PETITION BE ACCEPTED AS EVIDENCE IN AN UNCONTESTED PROBATE OR TRUST PROCEEDING; REQUIRING PLEADINGS IN PROBATE PROCEEDINGS TO BE SIGNED BY AN ATTORNEY; REQUIRING THAT GUARDIANS, PERSONAL REPRESENTATIVES, AND CONSERVATORS ACKNOWLEDGE FIDUCIARY RESPONSIBILITIES; PROVIDING FOR PRESUMPTIVE ENTITLEMENT OF SUPERVISED ADMINISTRATION UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 1-1-203, 25-4-203, 72-1-206, AND 72-3-401, MCA.

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

Section 1. Section 1-1-203, MCA, is amended to read:

“1-1-203. Terms relating to instruments and other writings. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) *“Affidavit” means a sworn written declaration made before an officer authorized to administer oaths or an unsworn written declaration made under penalty of perjury as provided in [section 2].*

(1)(2) *“Execution” of an instrument means subscribing and delivering it, with or without affixing a seal.*

(2)(3) *“Folio”, when used as a measure for computing fees, means 100 words, counting every two letters or numbers necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.*

(3)(4) "Printing" means the act of reproducing a design on a surface by any process.

(4)(5) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs that person's own name as a witness.

(5)(6) "Subscribing witness" means a person who sees a writing executed or hears it acknowledged and at the request of the party signs the person's name as a witness.

(6)(7) "Writing" includes printing."

Section 2. Unsworn declarations — penalty of perjury. (1) Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by a person's sworn written declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved by an unsworn written declaration, certificate, verification, or statement that is subscribed by the person as true under penalty of perjury in substantially the following form:

(a) If executed within the state:

"I declare under penalty of perjury that the foregoing is true and correct.

.....
Date and place Signature"

(b) If executed in any place outside the state:

"I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

.....
Date and place Signature"

(2) A deliberate falsification in any declaration pursuant to this section constitutes the offense of perjury as provided in 45-7-201 and is punishable as the offense of false swearing as provided in 45-7-202. A declaration under penalty of perjury executed in accordance with any provision of this code is not limited to the official proceedings referenced in 45-7-201.

(3) This section does not apply to writings requiring an acknowledgment, deposition, oath of office, or oath required to be taken before a special official other than a notary public.

Section 3. Section 25-4-203, MCA, is amended to read:

"25-4-203. Verification of pleadings. (1) In any case in which an affidavit of a verification by affidavit is required, except as otherwise specifically provided, the affidavit of verification verification by affidavit must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters stated in the affidavit on information and belief, and that as to those the deponent believes it to be true. The verification must be made by the party or, if there are several parties united in interest or pleading, by one at least one of the parties acquainted with the facts if the party is in the county and capable of making the affidavit verification. The verification may also be made by the agent or attorney of the party if the party is absent from the county where in which the attorney resides or is from if, for any other cause, the party is unable to verify the pleading, and in. In that case, the verification must state that the deponent is the agent or attorney of the party, the reason why the verification is made by the agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information, and belief of the agent or attorney.

(2) When a corporation is a party, the verification may be made by any officer of the corporation and must state ~~what~~ the office of the officer is and that the matters stated in the verification are true to the best knowledge, information, and belief of the officer. If there is no officer of the corporation within the county, the verification may be made by the corporation's attorney."

Section 4. Section 72-1-206, MCA, is amended to read:

"72-1-206. Oath or affirmation on filed documents. (1) Except as otherwise specifically provided in this code ~~or by rule~~, every document filed with the court under this code, including applications, petitions, *reports, accounts, objections, responses*, and demands for notice, ~~shall be deemed to~~ *must include* an oath, affirmation, *declaration under penalty of perjury as provided in [section 2]*, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed;

(2) ~~A deliberate falsification therein shall constitute~~ *of any document filed with the court pursuant to this section constitutes the offense of perjury and is punishable as the offense of false swearing.*"

Section 5. Permitted pleadings — verification required. (1) The following pleadings are permitted in probate and trust proceedings:

- (a) an application, petition, report, or account filed pursuant to this title; and
- (b) an objection or response filed pursuant to this title to an application, petition, report, or account.

(2) Except as provided in 25-4-203 regarding verification by an agent or attorney, the verification must be made as follows:

(a) An application must be verified by the applicant or, if there are two or more parties joining the application, by any one of the applicants.

(b) A petition must be verified by the petitioner or, if there are two or more parties joining the petition, by any one of the petitioners.

(c) A report or account must be verified by the person who has the duty to make the report or account or, if there are two or more persons having a duty to make the report or account, by any one of the persons having the duty.

(d) An objection or response must be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any one of the objectors or respondents.

Section 6. Affidavit or verified petition as evidence in uncontested proceedings. In any probate or trust matter, an affidavit or verified petition must be received as evidence when offered in an uncontested proceeding under this title.

Section 7. Attorney signature — pleadings. In addition to the verification required by 25-4-203 and [section 5], every application and other pleading filed in connection with any probate or trust proceeding must be signed by the attorney of the person filing the pleading if the person is represented by an attorney. The verification must be made by the person executing or filing the document with the court as provided in [section 5].

Section 8. Acknowledgment of fiduciary relationship and obligations — personal representative, guardian, or conservator. (1) Every applicant for appointment as the personal representative of a decedent's estate, as a guardian, or as a conservator shall sign and verify before a notary public or under penalty of perjury the following statement:

"By signing, accepting, or acting under this appointment, I acknowledge that I will assume the duties and responsibilities of a fiduciary and that I must

work exclusively for the benefit of the decedent's estate and its beneficiaries, the ward under any guardianship, or the protected person under any conservatorship. I also acknowledge that the primary duty of a personal representative, guardian, or conservator is the duty of loyalty to and protection of the best interests of the estate, ward, or protected person. Therefore, I acknowledge that:

I may not use any of the property or other assets of the decedent's estate, ward, or protected person for my own personal benefit;

I must direct any benefit derived from this appointment to the decedent's estate, ward, or protected person; and

I must avoid conflicts of interest and must use ordinary skill and prudence in carrying out the duties of this appointment."

(2) The statement in subsection (1) must be sworn before a notary public or executed under penalty of perjury in the following format:

"I declare under penalty of perjury under the laws of the state of Montana that the foregoing is true and correct.

Signed this ... day of, 20....

.....

Signature of applicant"

(3) This section applies to all applications for appointment as a personal representative or as a special administrator under Title 72, chapter 3, parts 2, 3, 4, and 7.

Section 9. Section 72-3-401, MCA, is amended to read:

"72-3-401. Supervised administration — nature and purpose — presumptive entitlement. (1) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.

(2) *If a probate estate has not been closed within 3 years after the first appointment of a personal representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent is entitled to petition for supervised administration under this section and is presumptively entitled to receive an order for supervised administration. The burden of proof to show cause why supervised administration should not be granted is on the personal representative or administrator.*"

Section 10. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 1, chapter 6, and the provisions of Title 1, chapter 6, apply to [section 2].

(2) [Sections 5 through 8] are intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [sections 5 through 8].

Section 11. 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 April 20, 2011

CHAPTER NO. 239

[SB 352]

AN ACT ALLOWING SPECIAL RISK CLASSIFICATIONS FOR PRIVATE PASSENGER AND COMMERCIAL AUTOMOBILE POLICIES TO BE BASED ON FAVORABLE AND ADVERSE INFORMATION CONTAINED IN AN EXPERIENCE RECORD; AND AMENDING SECTIONS 33-16-201 AND 33-18-210, MCA.

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

Section 1. Section 33-16-201, MCA, is amended to read:

“33-16-201. Standards applicable to rates. The following standards apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates may not be excessive or inadequate, and they may not be unfairly discriminatory.

(b) A rate may not be held to be excessive unless the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable.

(c) A rate may not be held to be inadequate unless the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer using the rate or unless the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2) (a) Consideration must be given, when applicable, to past and prospective loss experience within and outside this state, to revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of the insurer or group with respect to any kind of insurance or with respect to any subdivision or combination of insurance.

(4) (a) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for ~~individual~~ *separate* risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations.

(b) Special risk classifications may be established *for private passenger automobile policies*. *Special risk classifications may be based upon favorable*

aspects of an insured's *insured individual's* claims history that is 3 years old or older. ~~However, a special risk classification~~ *Special risk classifications* may not be established based on ~~anything~~ *adverse to the insured in a information contained in an insured individual's* driving record that is 3 years old or older.

(c) *Special risk classifications may be established for commercial automobile policies. Special risk classifications for commercial automobile policies may be based upon favorable aspects of an insured's claims history that is 5 years old or older. Special risk classifications for commercial automobile policies established for an insured's adverse loss experience may not use more than the most recent 5 years of claims history that is available.*

(d) Classifications and modifications apply to all risks under the same or substantially the same circumstances or conditions.

(e) *As used in subsection (4)(b), "private passenger automobile policy" means an automobile insurance policy issued to individuals or families but does not include policies known as commercial automobile policies.*

Section 2. Section 33-18-210, MCA, is amended to read:

"33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) (a) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual *under a private passenger automobile policy* based solely on adverse information contained in ~~a~~ *an individual's* driving record that is 3 years old or older. ~~However, an~~ *An* insurer may provide discounts to an insured *under a private passenger automobile policy* based on favorable aspects of an insured's claims history that is 3 years old or older.

(b) *An insurer may not use more than the most recent 5 years of loss experience that is available when determining whether to refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available under a commercial automobile policy. An insurer may provide discounts to an insured under a commercial automobile policy based on favorable aspects of an insured's claims history that is 5 years old or older.*

(c) *As used in subsection (9)(a), "private passenger automobile policy" means an automobile insurance policy issued to individuals or families but does not include policies known as commercial automobile policies.*

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault."

Approved April 20, 2011

CHAPTER NO. 240

[HB 51]

AN ACT MODIFYING THE PROCEDURES FOR PAYMENT OF ENERGY COST SAVINGS FROM PROJECTS FUNDED FROM ENERGY CONSERVATION PROGRAM BONDS; CREATING A DEBT SERVICE ACCOUNT; AMENDING SECTIONS 90-4-605, 90-4-612, AND 90-4-614, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 90-4-605, MCA, is amended to read:

“90-4-605. Preparation of energy conservation program. (1) The department shall identify buildings that have a potential for energy savings, based on age, energy use, function, and condition of the building. Upon request of the department, a state agency shall provide the department with information necessary to allow the department to comply with this requirement.

(2) Based on the criteria in subsection (1) and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the department shall select certain facilities for indepth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) (a) Upon completion of the energy analyses, the department shall identify estimated costs and savings to the state based on these analyses. ~~If the estimated savings are determined to be greater than the bond payment costs for a particular project, the~~

(b) *The department shall notify the department of administration of each project for which:*

(i) for projects to be funded with bond proceeds, the estimated savings are determined to be greater than the bond payment costs; and

(ii) for projects to be funded from the general fund or the energy conservation capital projects account, the estimated savings are determined to be greater than the cost of the project plus annual interest payments of 3% of the unpaid balance of the cost of the project.

(c) Upon receipt of the notification, the department of administration shall implement a design and construction project using bond proceeds *or funds from the general fund or the energy conservation capital projects account established in 90-4-617* for the costs of the project.

(4) The department shall compile a report that must include the following:

(a) a listing of contacts between the department and other state agencies;

(b) a summary of the department’s review of agency requests and a selection of projects for indepth analysis;

(c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project; and

(d) a listing of additional projects under consideration, for which energy analyses have not been conducted.

(5) The department shall submit the report required by subsection (4) to the governor before September 1 of each even-numbered year.”

Section 2. Section 90-4-612, MCA, is amended to read:

“90-4-612. Form — principal and interest — fiscal agent — deposit of proceeds. (1) Each series of energy conservation program bonds may be issued

by the board at the request of the department, in denominations and forms, whether payable to bearer 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 execution and delivery of definitive bonds, bearing interest at a rate or rates, maturing at times not exceeding 15 years from date of issue, subject to redemption at earlier times and prices and upon notice, and payable at the office of such fiscal agent of the state, as the board shall determine subject to the provisions of this section and 90-4-611.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The bonds and any interest coupons must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(3) The board may employ a fiscal agent to assist in the performance of its duties under this part.

(4) There is created an energy conservation program account within the state special revenue fund established in 17-2-102.

(5) All proceeds of bonds and notes issued under 90-4-611 must be deposited in the energy conservation program account, except that any premiums and accrued interest received must be deposited in the *energy conservation program debt service fund account* established in ~~17-2-102~~ [section 4].”

Section 3. Section 90-4-614, MCA, is amended to read:

“90-4-614. Appropriation of energy cost savings. (1) In preparing the executive budget each biennium, the governor shall include for each state agency *that is* participating in the state energy conservation program *using money from the sale of energy conservation program bonds*:

~~(a) an estimate of the energy cost savings expected for that agency in each year of the biennium; and~~

~~(b) a projection of the debt service on energy conservation program bonds that should be apportioned to that agency in each year of the biennium. Debt service is zero after the term of bond repayment.~~

(2) Each session, the legislature shall review the governor’s submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act ~~the following~~:

~~(a) authority for each participating state agency to transfer funds in an amount equal to the agency’s projected debt service energy cost savings to the energy conservation program debt service account established in 90-4-612 [section 4]. These transfers must be made for a period that is equal to the term of the bonds, plus 1 year.; and~~

~~(b) authority for each participating state agency to transfer funds to the long-range building program fund in an amount equal to the difference between the estimated energy cost savings to the agency and the projected debt service apportioned to that agency.~~

(3) The current level utility appropriations of *each state agencies agency* participating in the energy conservation program must be reduced by the ~~sum of the amounts~~ amount appropriated in ~~subsections (2)(a) and (2)(b)~~ subsection (2).

(4) Each participating state agency shall transfer upon request of the department the ~~amounts~~ amount appropriated in accordance with subsection (2).”

Section 4. Energy conservation program debt service account. (1) There is an energy conservation program debt service account within the debt service fund type established in 17-2-102.

(2) The department shall transfer to the long-range building program account created in 17-7-205 money in the energy conservation debt service account that is in excess of the amount that may be needed to satisfy the principal and interest payments on the energy conservation program bonds.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 90, chapter 4, part 6, and the provisions of Title 90, chapter 4, part 6, apply to [section 4].

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved April 21, 2011

CHAPTER NO. 241

[HB 83]

AN ACT CREATING A PRESCRIPTION DRUG REGISTRY; PROVIDING DEFINITIONS; ESTABLISHING PRESCRIPTION DRUG REPORTING REQUIREMENTS; PROVIDING FOR THE USE OF PRESCRIPTION DRUG REGISTRY INFORMATION; PROVIDING FOR FEES TO FUND THE PROGRAM; ALLOWING SANCTIONS AND PENALTIES; PROVIDING FOR IMMUNITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 37-7-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Short title. [Sections 1 and 3 through 15] may be cited as the "Montana Patient Safety Act".

Section 2. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) The term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) “Collaborative pharmacy practice agreement” means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) “Commercial purposes” means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) “Compounding” means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner’s prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing;

or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) “Confidential patient information” means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) “Controlled substance” means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

~~(11)~~(12) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(12)~~(13) “Device” has the same meaning as defined in 37-2-101.

~~(13)~~(14) “Dispense” or “dispensing” means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient’s agent in a suitable container appropriately labeled for administration to or use by a patient.

~~(14)~~(15) “Distribute” means the delivery of a drug or device by means other than administering or dispensing.

~~(15)~~(16) “Drug” means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection ~~(15)(a), (15)(b), or (15)(c)~~ (16)(a), (16)(b), or (16)(c).

~~(16)~~(17) “Drug utilization review” means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

~~(17)~~(18) “Equivalent drug product” means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

~~(18)~~(19) “Health care facility” has the meaning provided in 50-5-101.

~~(19)~~(20) (a) “Health clinic” means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

~~(20)~~(21) “Hospital” has the meaning provided in 50-5-101.

~~(21)~~(22) “Intern” means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

~~(22)~~(23) “Long-term care facility” has the meaning provided in 50-5-101.

~~(23)~~(24) (a) “Manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

~~(24)~~(25) “Medicine” means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

~~(25)~~(26) “Participant” means a physician’s office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

~~(26)~~(27) “Patient counseling” means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(27)(28) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(28)(29) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

(29)(30) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph."

(30)(31) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(31)(32) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(32)(33) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(33)(34) "Practice of pharmacy" means:

- (a) interpreting, evaluating, and implementing prescriber orders;
- (b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;
- (c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;
- (d) monitoring drug therapy and use;
- (e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;
- (f) participating in quality assurance and performance improvement activities;
- (g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and
- (h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(34)(35) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(35)(36) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(36)(37) "Prescriber" has the same meaning as provided in 37-7-502.

(37)(38) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 353.

(38)(39) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

~~(39)~~(40) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

~~(40)~~(41) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

~~(42)~~ "Registry" means the prescription drug registry provided for in [section 3].

~~(41)~~(43) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(42)~~(44) "Wholesale" means a sale for the purpose of resale."

Section 3. Prescription drug registry — purpose. (1) The board shall establish and maintain a prescription drug registry for the purpose of improving patient safety by:

(a) making a list of controlled substances prescribed to a patient available to the patient or to the patient's health care provider; and

(b) allowing authorized staff of the board who have signed appropriate confidentiality agreements to review the registry for possible misuse and diversion of controlled substances.

(2) The board shall electronically collect information on prescription drug orders involving controlled substances pursuant to [section 4] and shall disseminate information as provided in [sections 5 through 7].

Section 4. Prescription drug registry — reporting requirements. (1) Except as provided in subsection (2), each entity licensed by the board as a certified pharmacy or as an out-of-state mail order pharmacy that dispenses drugs to patients in Montana shall provide prescription drug order information for controlled substances to the registry by:

(a) electronically transmitting the information in a format established by the board unless the board has granted a waiver allowing the information to be submitted in a nonelectronic manner; and

(b) submitting the information in accordance with time limits set by the board unless the board grants an extension because:

(i) the pharmacy has suffered a mechanical or electronic failure or cannot meet the deadline for other reasons beyond its control; or

(ii) the board is unable to receive electronic submissions.

(2) This section does not apply to:

(a) a prescriber who dispenses or administers drugs to the prescriber's patients; or

(b) a prescription drug order for a controlled substance dispensed to a person who is hospitalized.

Section 5. Prescription drug registry review. The board may review the information in the registry for possible misuse and diversion of controlled substances prescribed and dispensed to a patient. The board may provide information about possible misuse or diversion to prescribers and dispensers as allowed by rule.

Section 6. Confidentiality. Patient information that is collected, recorded, transmitted, and stored for the registry is protected and may not be disclosed except as allowed in [section 7]. The board shall adopt rules to protect the confidentiality of the registry and to ensure that only authorized individuals have access to the registry.

Section 7. 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 [section 5], the board is authorized to provide data from the registry, upon request, only to the following:

(a) a person authorized to prescribe or dispense prescription drugs if the person certifies that the information is needed to provide medical or pharmaceutical treatment to a patient who is the subject of the request and who is under the person's care or has been referred to the person for care;

(b) a prescriber who requests information relating to the prescriber's own prescribing information if the prescriber certifies that the requested information is for a purpose in accordance with board rule;

(c) an individual requesting the individual's registry information if the individual provides evidence satisfactory to the board that the individual requesting the information is the person about whom the data entry was made;

(d) a designated representative of a government agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense drugs, in order to conduct investigations related to a health care professional who is the subject of an active investigation for drug misuse or diversion;

(e) a county coroner or a peace officer employed by a federal, state, tribal, or local law enforcement agency if the county coroner or peace officer has obtained an investigative subpoena;

(f) an authorized individual under the direction of the department of public health and human services for the purpose of reviewing and enforcing that department's responsibilities under the public health, medicare, or medicaid laws; or

(g) a prescription drug registry in another state if the data is subject to limitations and restrictions similar to those provided in [sections 3 through 14].

(2) The board shall maintain a record of each individual or entity that requests information from the registry and whether the request was granted pursuant to this section.

(3) The board may release information in summary, statistical, or aggregate form for educational, research, or public information purposes. The information may not identify a person or entity.

(4) Information collected by or obtained from the registry may not be used:

(a) for commercial purposes; or

(b) as evidence in any civil or administrative action, except in an investigation and disciplinary proceeding by the department or the agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense prescription drugs.

(5) Information obtained from the registry in accordance with the requirements of this section may be used in the course of a criminal investigation and subsequent criminal proceedings.

(6) The board shall adopt rules to ensure that only authorized individuals have access to the registry and only to appropriate information from the registry. The rules must be consistent with:

(a) the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.;

(b) administrative rules adopted in connection with that act;

(c) Article II, section 10, of the Montana constitution; and

(d) the privacy provisions of Title 50, chapter 16.

(7) The procedures established by the board under this section may not impede patient access to prescription drugs for legitimate medical purposes.

Section 8. Prescription drug registry — immunity. (1) A person or entity that complies with the reporting requirements of [section 4] is not subject to civil liability or other legal or equitable relief for reporting the information to the board.

(2) Unless a court of competent jurisdiction finds that a person or entity committed an unlawful act pursuant to [section 14], a person or entity in proper possession of information pursuant to [sections 1 through 15] is not subject to civil liability or other legal or equitable relief for any of the following acts or omissions:

(a) furnishing information pursuant to [sections 3 through 7];

(b) receiving, using or relying on, or not using or relying on information received pursuant to [sections 3 through 7]; or

(c) relying on information that was entered into the registry in error, was factually incorrect, or was released by the board to the wrong person or entity.

(3) The immunity provisions of this section do not apply to the board, a state agency, or any political subdivision of the state.

Section 9. Registry information retention — destruction. The board shall retain the information collected for the registry for up to 3 years, as established by rule. After 3 years, the board shall destroy the information unless it is being used as part of an active investigation.

Section 10. Administration of prescription drug registry. The board may hire or contract for other professional, technical, or clerical staff as necessary to operate the registry. A contractor shall comply with the provisions regarding confidentiality of prescription information in [sections 6 and 7] and is subject to the penalties specified in [section 14] for unlawful acts.

Section 11. Prescription drug registry — advisory group. (1) The board shall establish an advisory group to provide information and advice about the development and operation of the registry, including but not limited to information on:

(a) the criteria for reporting information from the registry to prescribers and pharmacists;

(b) the design and implementation of educational courses about the registry;

(c) standards for evaluating the effectiveness of the registry; and

(d) administrative rules for establishing and maintaining the registry.

(2) The advisory group consists of but is not limited to representatives of:

(a) health care licensing boards that oversee health care providers who have authority to prescribe or dispense drugs;

(b) associations that represent health care professionals who have authority to prescribe or dispense drugs;

- (c) associations that advocate for patients;
- (d) entities involved in tribal health services or issues; and
- (e) the department of justice provided for in 2-15-2001.

(3) The advisory group may identify other individuals for appointment to the group.

(4) The board shall establish rules for the conduct of advisory group business.

(5) The advisory group may not receive or access confidential health care information contained in the registry.

Section 12. Prescription drug registry — funding. (1) Each person licensed under Title 37 who prescribes, dispenses, or distributes controlled substances shall pay to the board a nonrefundable fee that is set by rule and that may not exceed \$15.

(2) The board may apply for any available grants and may accept gifts, grants, or donations to assist in establishing and maintaining the registry.

(3) Funds collected pursuant to [sections 3 through 15] must be deposited into a state special revenue account to the credit of the department. The money must be used to defray the expenses of the board in establishing and maintaining the registry and in discharging its administrative and regulatory duties under [sections 3 through 15].

Section 13. Rulemaking authority. The board shall adopt rules to carry out and enforce [sections 3 through 15], including but not limited to rules that:

(1) specify the type of information to be reported on prescription drug orders involving controlled substances;

(2) establish the requirements for transmitting from a pharmacy to the board prescription drug order information involving controlled substances;

(3) define the electronic format for submission of information;

(4) define the circumstances under which a pharmacy may receive a waiver from the requirement to submit information electronically;

(5) specify the procedure through which a pharmacy may request an extension of the time limit for submitting information;

(6) establish how a person or entity authorized to receive information from the registry may submit a request for the information;

(7) specify the ways in which the board may use records involving requests for registry information to document and report on statistics involving the registry;

(8) set the fees to be charged for establishing and maintaining the registry; and

(9) establish confidentiality provisions to ensure that the privacy of patient information is maintained.

Section 14. Unlawful acts — sanctions — civil penalties. (1) A pharmacist who fails to submit prescription drug order information to the board as required by [section 4] or who willfully submits incorrect prescription drug order information must be referred to the board for consideration of administrative sanctions.

(2) A person or entity authorized to possess registry information pursuant to [sections 5 through 7] who willfully discloses or uses the registry information in violation of [sections 5 through 7] or a rule adopted pursuant to [sections 3

through 15] must be referred to the appropriate licensing board or regulatory agency for consideration of administrative sanctions.

(3) In addition to the administrative sanction provided in subsection (2), a person or entity who willfully discloses or uses information from the registry in violation of [sections 5 through 7] or a rule adopted pursuant to [sections 3 through 15] is liable for a civil penalty of up to \$10,000 for each violation.

(4) 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 [sections 3 through 15] or a rule adopted under [sections 3 through 15] may be brought in the district court of any county where a violation occurs or, if mutually agreed on by the parties in the action, in the district court of the first judicial district.

(6) Civil penalties collected pursuant to [sections 3 through 15] must be deposited into the state special revenue account created pursuant to [section 12] 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 [sections 3 through 15].

Section 15. Report to legislature. The board shall provide a report to the appropriate interim committees of the legislature each interim, including but not limited to information on:

- (1) the cost of establishing and maintaining the registry;
- (2) any grants, gifts, or donations received to assist in establishing and maintaining the registry;
- (3) how registry information was used; and
- (4) how quickly the board was able to answer requests for information from the registry.

Section 16. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 17. Codification instruction. [Sections 1 and 3 through 15] are intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to [sections 1 and 3 through 15].

Section 18. 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 19. Effective date. [This act] is effective July 1, 2011.

Section 20. Termination. [Section 12(1)] terminates July 1, 2015.

Approved April 21, 2011

CHAPTER NO. 242

[HB 91]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ELECTIONS;
REVISING THE TIMELINE TO FILL VACANCIES IN THE STATE SENATE;
REVISING PROCEDURES TO GIVE NOTICE OF SPECIAL ELECTIONS;
REVISING PROCESSING AND RETENTION PROCEDURES FOR CERTAIN

VOTER RECORDS; REVISING PROCEDURES FOR CANDIDATE NOMINATION AND WITHDRAWAL; REVISING REQUIREMENTS TO APPOINT ELECTION JUDGES WHO REPRESENT DIFFERENT PARTIES IN CERTAIN SITUATIONS; REVISING PROCEDURES RELATING TO VOTING BY ABSENTEE BALLOT; REVISING ELECTION RECOUNT PROCEDURES; AMENDING SECTIONS 5-2-406, 13-1-106, 13-1-108, 13-1-303, 13-1-304, 13-2-108, 13-2-110, 13-2-112, 13-2-115, 13-2-122, 13-2-220, 13-2-222, 13-2-304, 13-2-511, 13-2-512, 13-3-105, 13-4-102, 13-4-207, 13-10-201, 13-10-203, 13-10-209, 13-10-211, 13-10-211, 13-10-325, 13-10-404, 13-10-405, 13-12-202, 13-12-203, 13-12-207, 13-13-111, 13-13-112, 13-13-113, 13-13-114, 13-13-116, 13-13-118, 13-13-119, 13-13-201, 13-13-211, 13-13-212, 13-13-214, 13-13-222, 13-13-225, 13-13-241, 13-13-301, 13-13-602, 13-14-115, 13-14-117, 13-14-118, 13-14-212, 13-15-101, 13-15-107, 13-15-108, 13-15-112, 13-15-205, 13-15-206, 13-15-402, 13-15-404, 13-15-506, 13-16-201, 13-16-412, 13-16-419, 13-17-203, 13-17-503, 13-19-102, 13-19-106, 13-19-206, 13-19-301, 13-19-306, 13-19-307, 13-19-308, 13-19-309, 13-19-310, 13-19-311, 13-19-313, 13-25-101, AND 13-38-201, MCA; REPEALING SECTIONS 13-2-123, 13-13-231, AND 13-21-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 5-2-406, MCA, is amended to read:

“5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual may be appointed, pursuant to 5-2-402, if the legislature is called into special session. However, the appointment may run only until a person is elected to complete the term at the upcoming general election and sworn into office. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs ~~75~~ 85 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election must be utilized.

(b) Whenever the vacancy occurs on or after the ~~75th~~ 85th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term.”

Section 2. Section 13-1-106, MCA, is amended to read:

“13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) Except as provided in subsections (2) and (3), polling places must be open from 7 a.m. to 8 p.m.

(2) A polling place having fewer than 400 registered electors must be open from *at least* noon to 8 p.m. or until all registered electors in any precinct have voted, at which time *that precinct in* the polling place must be closed immediately.

(3) If an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polling place must be opened and closed at the times set for the school election, as provided in 20-20-106.”

Section 3. Section 13-1-108, MCA, is amended to read:

“13-1-108. Notice of special elections. Notice of any special election must be broadcast or published at least three times in the 4 weeks immediately preceding the close of registration on radio or television as provided in 2-3-105 through 2-3-107 or election in a newspaper of general circulation in the jurisdiction where the election will be held or may be broadcast on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this section are fulfilled upon the third publication or broadcast of the notice.”

Section 4. Section 13-1-303, MCA, is amended to read:

“13-1-303. Disposition of ballots and other election materials. (1) (a) Except for a federal election and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official either for a recount procedure or to process provisional ballots.

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

- (i) contest begun;
- (ii) recount pending; or
- (iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-402.”

Section 5. Section 13-1-304, MCA, is amended to read:

“13-1-304. Duties of officials when election not held. If a scheduled election is not necessary or is canceled for any reason specified in law, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body.”

Section 6. Section 13-2-108, MCA, is amended to read:

“13-2-108. Rulemaking for statewide voter registration list. (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

~~(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123;~~

~~(e)~~(d) technical security of the statewide voter registration database;

~~(f)~~(e) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

~~(g)~~(f) quality control measures for the system and system users.

(3) The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector."

Section 7. Section 13-2-110, MCA, is amended to read:

"13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes.

(1) An individual may apply for voter registration in person or by mail, *postage paid*, by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides.

~~(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed.~~

~~(3)~~(2) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

~~(4)~~(3) Except as provided in subsection ~~(5)~~ (4):

(a) an applicant for voter registration shall provide the applicant's *Montana* driver's license number; or

(b) if the applicant does not have a *Montana* driver's license, the applicant shall provide the last four digits of the applicant's social security number.

~~(5)~~(4) (a) If an applicant does not have a *Montana* driver's license or social security number, the applicant shall provide as an alternative form of identification:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or

(ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

~~(6)~~(5) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted

under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) (3) or (5) (4) or if the information provided was incorrect or insufficient to verify the individual's identity or eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7)(6) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(8)(7) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9)(8) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law."

Section 8. Section 13-2-112, MCA, is amended to read:

"13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the ~~manner that the administrator considers most efficient~~ *statewide voter registration database*. The original signed registration form for each elector must be ~~filed alphabetically in a separate file for each precinct scanned, and the scanned copy must be retained in the statewide voter registration database. The original paper copy must be kept according to the state records retention schedule for such records. Additional files and records may be established for convenience.~~ The information recorded in the official register of electors and the design of the registration forms must be prescribed by the secretary of state *in the statewide voter registration database.*"

Section 9. Section 13-2-115, MCA, is amended to read:

"13-2-115. Certification of statewide voter registration list — local lists to be prepared. (1) ~~Immediately after regular registration is closed under 13-2-301, the secretary of state shall certify the official statewide voter registration list. No later than 5 working days after the deadline prescribed in 13-2-301(3), election administrators shall enter all voter registration applications that were submitted within the deadline for regular registration into the statewide voter registration database.~~

(2) *The secretary of state shall certify the official statewide voter registration list by utilizing the information in the statewide voter registration database.*

(2)(3) Each election administrator shall have printed from the certified statewide voter registration database lists of all registered electors in each precinct in the county. Except as provided in subsections (5) (6) and (6) (7), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

(3)(4) A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(4)(5) Lists of registered electors need not be printed if the election will not be held.

(5)(6) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's

spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

(6)(7) (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection (6)(b) (7)(b), that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection (6)(e) (7)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."

Section 10. Section 13-2-122, MCA, is amended to read:

"13-2-122. Charges for registers, elector lists, and mailing labels made available to public. (1) Except as provided in subsection (2), upon written request, the secretary of state ~~or a local election administrator~~ shall furnish to any elector *individual*, for noncommercial use, ~~a copy of the official precinct registers, a current list of legally registered electors, or mailing labels for registered electors available extracts and reports from the statewide voter registration database. Upon request, a local election administrator shall furnish to an individual, for noncommercial use, a copy of the official precinct registers, a current list of legally registered electors, mailing labels for registered electors, or other available extracts and reports.~~ Upon delivery, the secretary of state or the local election administrator may collect a charge not to exceed the actual cost of the register, list, ~~or mailing labels, or available extracts and reports.~~

(2) For an elector whose address information is protected from general distribution under 13-2-115(5) ~~or (6) or (7)~~, the secretary of state or a local election administrator may not include the elector's residential address on any register, list, ~~or mailing labels, or available extracts and reports~~ but may list only the elector's name."

Section 11. Section 13-2-220, MCA, is amended to read:

"13-2-220. Maintenance of active and inactive voter registration lists for elections — rules by secretary of state. (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, *at least one of which* an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to

confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election, *applicants who failed to provide required information on registration cards, and provisionally registered electors* by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) *An individual who submits an application for an absentee ballot for a federal general election or who completes and returns the address confirmation notice specified in 13-13-212(4) during the calendar year in which a federal general election is held is not subject to the procedure in subsection (1)(c) unless the individual's ballot for a federal general election is returned as undeliverable and the election administrator is not able to contact the elector through the most expedient means available to resolve the issue.*

~~(2)~~(3) Any notices returned as *undeliverable* to the election administrator or any notices to which the elector fails to respond after ~~using~~ the election administrator uses the procedures provided in subsection (1) must be followed *within 30 days* by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the *final* confirmation notice, the election administrator shall move the elector to the inactive list.

~~(3)~~(4) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

~~(4)~~(5) An elector's registration may be reactivated pursuant to 13-2-222 or may be canceled pursuant to 13-2-402."

Section 12. Section 13-2-222, MCA, is amended to read:

"13-2-222. Reactivation of elector. (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

(a) appears at a polling place in order to vote, ~~votes~~ *submits an application to vote* by absentee ballot in a polling place election or mail ballot election, or votes in a mail ballot election conducted under Title 13, chapter 19;

(b) notifies the county election administrator in writing of the elector's current residence, which must be in that county; or

(c) completes a reactivation form provided by the county election administrator that provides current address information in that county.

(2) After an elector has complied with subsection (1)(a), (1)(b), or (1)(c), the county election administrator shall place the elector's name on the active voting list for that county.

(3) An elector reactivated pursuant to subsection (1)(a) is a legally registered elector for purposes of the election in which the elector voted."

Section 13. Section 13-2-304, MCA, is amended to read:

“13-2-304. Late registration — late changes — nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector’s voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector’s voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector’s voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(2) If an elector has already been ~~sent an absentee~~ *issued a ballot* for the election, the elector may change the elector’s voter registration information ~~only with respect to the next election if the original voted ballot has not been received at the county election office and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration database prior to the change.~~

(3) The provisions of subsection (1) do not apply with respect to an elector’s registration to vote in a school election held pursuant to Title 20.”

Section 14. Section 13-2-511, MCA, is amended to read:

“13-2-511. Transferring registration or changing name. An elector shall notify the election administrator *in a written communication signed by the elector* of a change in residence within the county or a change in name ~~by using a transfer form provided by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked “for transfer of address” or “for change of name” in a space provided on the form for that purpose.~~

Section 15. Section 13-2-512, MCA, is amended to read:

“13-2-512. Right to vote when precinct or name changed — change of status. (1) An elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote ~~in the precinct at the polling place or by absentee or mail ballot in the precinct~~ where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector’s registration has been canceled as provided in 13-2-402.

(2) An elector who still resides in the same precinct where registered, whose name has changed, and who has failed to notify the election administrator of the change by a new registration form may vote under the elector’s former name at the first election at which the elector offers to vote after the change unless the elector’s registration has been canceled as provided in 13-2-402.

(3) The elector shall state the elector’s correct residence address and name when offering to vote and shall complete a transfer form or new registration form to make the necessary correction before being allowed to ~~sign the precinct register and~~ *vote in a polling place election or by absentee or mail ballot.*”

Section 16. Section 13-3-105, MCA, is amended to read:

“13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place must be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 days or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice must be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. The building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

(5) The exterior of the voting systems, or of the booths in which they are placed, and every part of the polling place must be in plain view of the election judges.”

Section 17. Section 13-4-102, MCA, is amended to read:

“13-4-102. Manner of choosing election judges. (1) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges must be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges must include judges representing all parties that have submitted lists as provided in subsection (1). No more than the number of election judges needed to obtain a simple majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list *meeting the requirements of this section*, the governing body shall, to the extent possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list *meeting the requirements of this section*, the election administrator may select enough people meeting the qualifications of 13-4-107 to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-103.”

Section 18. Section 13-4-207, MCA, is amended to read:

“13-4-207. Judges to remain at polls — emergency provisions — part-time service. (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge or one who fails to appear.

(5) The election administrator may assign a judge or chief election judge to work less than a full polling day, but at least three judges, including a chief election judge, must be on duty during the time that the polls are open.”

Section 19. Section 13-10-201, MCA, is amended to read:

“13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. *Except for a candidate who files under 13-38-201, a candidate may not file for more than one public office.* Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector’s party. For a partisan election, an elector may not file a declaration for more than one party’s nomination.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person’s place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) (a) Except as provided in 13-10-211 and subsection (6)(b) of this section, a candidate's declaration for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1); *or for a political subdivision that holds an election on the date of either of those elections*, a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 20. Section 13-10-203, MCA, is amended to read:

"13-10-203. Indigent candidates. If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a ~~verified~~ statement that the candidate is unable to pay the filing fee;

(2) from a candidate for nomination, a ~~verified~~ statement that the candidate is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) the petition contains the name of the office to be filled and the candidate's name and residence address;

(b) the petition contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been *submitted to the appropriate election administrator at least 1 week prior to the applicable deadline in 13-10-201(6) and have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304.*"

Section 21. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement and preparing of primary ballots. (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate;

(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and

(iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

(2) An election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; or

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) If, pursuant to subsection (2), *in a primary election held under 13-1-107(1)* a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

(6) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices.”

Section 22. Section 13-10-211, MCA, is amended to read:

“13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (~~7~~) (8), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. *Except for a candidate who files under 13-38-201, a candidate may not file for more than one public office.* The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:

(a) (i) the candidate’s first and last names;

(ii) the candidate’s initials, if any, used instead of a first name, or first and middle name, and the candidate’s last name;

(iii) the candidate’s nickname, if any, used instead of a first name, and the candidate’s last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate’s last name;

(b) the candidate’s mailing address;

(c) a statement declaring the candidate’s intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate’s signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the

deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense.

(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be provided to the election administrator or secretary of state:

- (a) by facsimile transmission if a facsimile facility is available for receipt;
- (b) in person; or
- (c) by mail.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) *A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.*

~~(7)~~(8) *The Except as provided in 13-38-201(5), the requirements in subsection (1) do not apply if:*

- (a) an election is held;
- (b) a person's name is written in on the ballot;
- (c) the person is qualified for and seeks election to the office for which the person's name was written in; and
- (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 23. Section 13-10-325, MCA, is amended to read:

"13-10-325. Withdrawal from nomination. (1) (a) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom the candidate's declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought ~~and the reason for withdrawal. The statement must be sworn or affirmed before an officer empowered to administer oaths. Unless filed electronically with the secretary of state, the statement of withdrawal from nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.~~

(b) Except as provided in subsection (1)(c), a candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(c) A candidate may not withdraw later than 85 days before a general election conducted pursuant to 13-1-104(1)(a) or a primary election conducted pursuant to 13-1-107(1).

(2) Filing fees paid by the candidate may not be refunded."

Section 24. Section 13-10-404, MCA, is amended to read:

"13-10-404. Placement of candidate on primary ballot — methods of qualification. Before an individual intending to qualify as a presidential candidate may qualify for placement on the ballot, the individual shall qualify by one or more of the following methods:

(1) The individual has *submitted a declaration for nomination to the secretary of state pursuant to 13-10-201(2) and has* been nominated on petitions with the verified signatures of at least 500 qualified electors. The secretary of state shall prescribe the form and content of the petition.

(2) The individual has submitted a declaration for nomination to the secretary of state pursuant to 13-10-201, and the secretary of state has determined, by the time that declarations for nomination are to be filed, that the individual is eligible to receive payments pursuant to the federal Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031, et seq.”

Section 25. Section 13-10-405, MCA, is amended to read:

“13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(6)(b). A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state *by the filing deadline prescribed in 13-10-201(6)(b).*”

Section 26. Section 13-12-202, MCA, is amended to read:

“13-12-202. Ballot form and uniformity. (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

- (a) the manner in which each type of ballot may be corrected under 13-12-204;
- (b) what provisions must be made on the ballot for write-in candidates;
- (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
- (d) how unvoted ballots must be handled;
- (e) how the number of individuals voting and the number of ballots cast must be recorded; and
- (f) the order and arrangement of voting system ballots.

(2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding 13-19-106(1), when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101~~(2)~~(5).”

Section 27. Section 13-12-203, MCA, is amended to read:

“13-12-203. Appearance of candidate’s name and party designation on ballot. (1) Subject to 13-12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates, in partisan elections, candidates’ names must appear under the title of the office sought, with the name of the party in not more than three words appearing opposite *or below* the name.

(2) Subject to 13-12-202, in nonpartisan *general* elections, the candidates' names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the ~~words word~~ "Nominated without party designation" "*Nonpartisan*."

Section 28. Section 13-12-207, MCA, is amended to read:

"13-12-207. Order of placement. (1) The order on the ballot for state and federal offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.

- (b) United States senator;
- (c) United States representative;
- (d) governor and lieutenant governor;
- (e) secretary of state;
- (f) attorney general;
- (g) state auditor;
- (h) state superintendent of public instruction;
- (i) public service commissioners;
- (j) clerk of the supreme court;
- (k) chief justice of the supreme court;
- (l) justices of the supreme court;
- (m) district court judges;
- (n) state senators;
- (o) members of the *Montana* house of representatives.

(2) The following order of placement must be observed for county offices:

- (a) clerk of the district court;
- (b) county commissioner;
- (c) county clerk and recorder;
- (d) sheriff;
- (e) coroner;
- (f) county attorney;
- (g) county superintendent of schools;
- (h) county auditor;
- (i) public administrator;
- (j) county assessor;
- (k) county treasurer;
- (l) surveyor;
- (m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term.”

Section 29. Section 13-13-111, MCA, is amended to read:

“13-13-111. Provision and use of voting stations. (1) The election administrator shall provide a sufficient number of voting stations to allow voting to proceed with as little delay as possible.

(2) Voting stations must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted.

(3) No more than one individual may occupy a voting station at one time, except when assistance is furnished to an elector as provided by law.

(4) An individual may not occupy a voting station longer than is reasonably necessary to prepare the elector’s ballot, after which the election judges may eject *effect the removal of* the elector from the station.”

Section 30. Section 13-13-112, MCA, is amended to read:

“13-13-112. Display of instructions for electors. (1) Except as provided in subsection (3), instructions for electors on how to prepare their ballots or use a voting system must be posted in each voting station provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain:

(a) how to obtain ballots for voting;

(b) how to prepare ballots, including how to:

(i) cast a valid vote, including a valid vote for a write-in candidate;

(ii) correct a mistake; and

(iii) ensure the proper disposition of the ballot after the elector is finished voting;

(c) how to obtain a new ballot in place of one spoiled by accident;

(d) how to vote provisionally pursuant to 13-13-601;

(e) the election date and the hours the polls are open; and

(f) instructions for first-time voters who registered by mail.

(3) If the instructions for use of a voting system are printed on the system or are part of a ballot package given to each elector, separate instructions need not be posted in the voting station.

(4) ~~Official~~ *Sample* ballots, clearly marked “sample” across the face, must be posted at each voting station and in conspicuous places around the polling place.”

Section 31. Section 13-13-113, MCA, is amended to read:

“13-13-113. Warning notice to be posted. (1) Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed “WARNING” in large letters and shall state:

“The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations.”

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

(2) *The notice may also contain any other information prescribed by the secretary of state.*”

Section 32. Section 13-13-114, MCA, is amended to read:

“13-13-114. Voter identification and marking precinct register book before elector votes — provisional voting. (1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector’s name. If the elector does not present photo identification, including but not limited to a valid driver’s license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector’s name and current address.

(b) An elector who provides the information listed in subsection (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

(c) If the information provided in subsection (1)(a) differs from information in the precinct register but an election judge determines that the information provided is sufficient to verify the voter’s identity and eligibility to vote pursuant to 13-2-512, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector’s voter registration information, and vote.

(d) An election judge shall write “transfer form” or “registration form” beside the name of any elector submitting a form.

(2) If the information presented under subsection (1) is insufficient to verify the elector’s identity and eligibility to vote or if the elector’s name does not appear in the precinct register *or appears in the register as provisionally registered and this provisional registration status cannot be resolved at the polling place*, the elector may sign the precinct register and cast a provisional ballot as provided in 13-13-601.

(3) If the elector fails or refuses to sign the elector’s name or if the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to 13-1-116 is not provided, the elector may cast a provisional ballot as provided in 13-13-601.”

Section 33. Section 13-13-116, MCA, is amended to read:

“13-13-116. Paper ballots to be marked — one ballot to elector. (1) Before delivering a paper ballot to an elector, the election judges shall ensure that the ballot is ~~marked~~ *individually stamped* with the words “official ballot” without part of the mark appearing on the stub, if any. ~~The election judges shall also ensure that the ballot is marked with the name of the county, the number of the precinct, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.~~

(2) Each elector must receive from the election judges one of each type of ballot ~~being used at the election for which the elector is eligible.~~”

Section 34. Section 13-13-118, MCA, is amended to read:

“13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. *If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector.* The elector may request assistance in marking the ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating that the elector is entitled to vote and shall write in the precinct register by the elector’s name “voted on the premises by oath” and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce that the judge has “a ballot offered by (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?” If an objection is not heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector’s right to vote must be resolved as provided in Title 13, chapter 13, part 3.”

Section 35. Section 13-13-119, MCA, is amended to read:

“13-13-119. Aid to disabled elector. (1) When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.

(2) An election judge or an individual chosen by the disabled elector as specified in subsection (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking the elector’s ballot.

(3) The election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge.

(4) The elector may be assisted by two judges who represent different parties. *If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector.* The judges shall certify on the precinct register opposite the disabled elector’s name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(5) Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges to aid the elector in the marking of the elector’s ballot. An individual designated to assist the elector shall sign the individual’s name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector’s employer, an agent of the elector’s employer, or an officer or agent of the elector’s union.

(6) No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector’s ballot.”

Section 36. Section 13-13-201, MCA, is amended to read:

“13-13-201. Voting by absentee ballot — procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;

(d) executing the ~~affidavit~~ *affirmation* printed on the return envelope; and

(e) returning the return envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to the election administrator or, pursuant to 13-13-229, to the special absentee election board.

(3) A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address."

Section 37. Section 13-13-211, MCA, is amended to read:

"13-13-211. Time period for application. (1) Except as provided in 13-13-222, 13-21-210, and subsection (2) of this section, an application for an absentee ballot must be made ~~during a period beginning 75 days before the day of election and ending at~~ *before* noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot as provided in 13-13-212(2)."

Section 38. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions.

(1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail a forwardable address confirmation form in January of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the ~~register~~ *absentee list* may subsequently request to be mailed an absentee ballot for each subsequent election.”

Section 39. Section 13-13-214, MCA, is amended to read:

“13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

(c) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

~~(a) a form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);~~

~~(b)~~(a) a secrecy envelope, free of any marks that would identify the voter; and

(e)(b) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and *shall* remove the stubs from the ballots, ~~attaching the stubs to the elector's absentee ballot application~~ *keeping the stubs in numerical order with the application for absentee ballots, if applicable, or in a precinct envelope or container for that purpose.*

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

- (a) a statewide ballot issue appears on the ballot mailed to the elector; and
- (b) the elector requests a voter information pamphlet."

Section 40. Section 13-13-222, MCA, is amended to read:

"13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

~~(3) If the ballot is marked before the election administrator, the election administrator shall deal with it as provided in 13-13-231.~~

~~(4)(3) The ballot is considered voted at the time it is received by the election administrator at the election administrator's office."~~

Section 41. Section 13-13-225, MCA, is amended to read:

"13-13-225. Special absentee election boards — members — appointment. (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each special absentee election board must consist of two members, one from each of the two political parties receiving the highest number of votes in the state during the last preceding general election, *if possible*. Board members shall reside in the county in which they serve.

(3) A member of a special absentee election board may not be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county."

Section 42. Section 13-13-241, MCA, is amended to read:

“13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) After an absentee ballot is received, an election administrator shall compare the signature of the elector or elector’s agent on the absentee ballot request *or on the elector’s voter registration card* with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application *or on the elector’s voter registration card*, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application *or on the elector’s voter registration card*, the election administrator or an election judge shall open the outer return envelope and determine whether the elector’s voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. *If an unvoted party ballot is not received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received.*

(4) If an elector’s ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector’s identification or eligibility information was insufficient and that the elector’s ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form *or on the elector’s voter registration card*, the election administrator shall notify the elector, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator’s office prior to 8 p.m. on election day.

(6) The elector may verify the signature by affirming that the signature is in fact the elector’s or by completing a new registration card containing the elector’s current signature or by filing a new agent designation form.

(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107.

(8) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box.

(9) *The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.*"

Section 43. Section 13-13-301, MCA, is amended to read:

"13-13-301. Challenges. (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, *except as provided in 13-2-514; or*

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter; *or*

(h) *does not meet another requirement provided in the constitution or by law.*

(3) When a challenge has been made under this section, *unless the election administrator determines that the challenge is insufficient, then without the need for further information:*

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

(i) within 5 days of the filing of the challenge if the election is more than 5 days away; or

(ii) on or before election day if the election is less than 5 days away.

(c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors.”

Section 44. Section 13-13-602, MCA, is amended to read:

“13-13-602. Fail-safe and provisional voting by mail. (1) To ensure the election administrator has information sufficient to determine the elector’s eligibility to vote, an elector voting by mail may enclose in the outer return envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector’s name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector’s name and current address *or other information necessary to determine the elector’s eligibility to vote.*

(2) The elector’s ballot must be handled as a provisional ballot under 13-15-107 if:

(a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1);

(b) the information provided under subsection (1) is invalid or insufficient to verify the elector’s eligibility; or

(c) the elector’s name does not appear on the precinct register.”

Section 45. Section 13-14-115, MCA, is amended to read:

“13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated “nonpartisan primary ballots”. The ballots must be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) The election administrator of a political subdivision may determine that a *local nonpartisan portion of a primary election* need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a), the administrator shall give notice to the governing body that a primary election will not be held.

(3) The governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held.”

Section 46. Section 13-14-117, MCA, is amended to read:

“13-14-117. Placing names on ballots for general election. (1) Except as provided in subsection (2), candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

(2) If, pursuant to 13-14-115(2), a *local nonpartisan portion of a primary election* is not held, then all candidates who filed for an office are nominees for the office.”

Section 47. Section 13-14-118, MCA, is amended to read:

“13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary election *and before the 85th day before the general election* a candidate is not able to run for the office for any reason, the vacancy must be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than ~~75~~ 85 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office must be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) must be certified and must appear on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than ~~75~~ 85 days before the general election and a qualified individual is not elected to the office at the general election, the office is vacant and must be filled as provided by law.”

Section 48. Section 13-14-212, MCA, is amended to read:

“13-14-212. Form of ballot on retention of certain incumbent judicial officers. (1) If the incumbent is the only candidate for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the *election administrator may not include a nonpartisan designation or write-in space for the office on the general election ballot. The name of the incumbent must be placed on the official ballot for the general election as follows:*

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

(2) Following the question, provision must be made, subject to rules adopted pursuant to 13-12-202, for a voter to indicate a “yes” or “no” vote.”

Section 49. Section 13-15-101, MCA, is amended to read:

“13-15-101. Votes to be publicly counted — return forms. (1) Any official vote count must be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately ~~post~~ *display* one of the return forms at the place of counting and return a copy to the election administrator. Both forms must be signed by all the election judges completing the count.”

Section 50. Section 13-15-107, MCA, is amended to read:

“13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification or eligibility information either in person, by facsimile, by electronic means, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to

13-13-114(1)(a), the election administrator shall compare the signature of the elector or the elector's agent designated pursuant to 13-1-116 on the affirmation required under 13-13-601 to the signature on the elector's voter registration card or the agent's designation form.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (5).

(c) If the signatures do not match and the elector or the elector's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the elector's identity or eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's identity or eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was *or was* not counted with the reasons why the ballot was *or was* not counted.

(5) A provisional ballot must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the elector's voter information is:

(a) verified before 5 p.m. on the day after the election; or

(b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.

(6) Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election."

Section 51. Section 13-15-108, MCA, is amended to read:

"13-15-108. Rejected ballots — handling provided by rule. (1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return envelopes must be handled and marked as provided under rules adopted by the secretary of state.

~~(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be handled and marked as provided under rules adopted by the secretary of state.~~

(3)(2) After being handled and marked as provided in this section, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked as provided under rules adopted by the secretary of state. After a package or container is sealed pursuant to this subsection (3), a package or container may not be opened without a court order."

Section 52. Section 13-15-112, MCA, is amended to read:

"13-15-112. Appointment of counting boards. To count votes in any election under this title, when election judges are appointed under 13-4-101,

each county's governing body shall designate *one or more groups of* three of the election judges to act as a counting board ~~boards~~. The governing body may also designate *one or more groups of* three of the election judges to act as an absentee ballot counting board ~~boards~~ under 13-15-104."

Section 53. Section 13-15-205, MCA, is amended to read:

"13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

- (a) the precinct register;
- (b) the list of individuals challenged;
- (c) the pollbook;
- (d) both of the tally sheets.

(2) The election judges shall enclose in a separate ~~package or envelope container~~, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate ~~package or envelope container~~, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope must be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots must be enclosed in a separate ~~package or envelope container~~, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write the judge's name across all seals.

(5) The return form provided for in 13-15-101 must be returned with the items provided for in this section but may not be sealed in any of the ~~packages containers~~.

(6) The ~~envelopes or packages containers~~ required by this section must be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies."

Section 54. Section 13-15-206, MCA, is amended to read:

"13-15-206. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

- (A) the names of all individuals who received votes;

- (B) the offices for which individuals received votes;
 - (C) the total votes received by each individual as shown by the tally sheets;
- and
- (D) the total votes received for or against each ballot issue, if any.
- (iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.
- (3) (a) When a voting system is counting votes:
 - (i) if a vote is recognized and counted by the system, it is a valid vote;
 - (ii) if a vote is not recognized and counted by the system, it is not a valid vote;
 - (iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).
 - (b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unvoted ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).
 - (c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.
 - (d) After all valid votes have been counted and totaled, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).
- (4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.
 - (ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.
 - (iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.
 - (b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.
- (5) A write-in vote may be counted if:
 - (a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or
 - (ii) pursuant to 13-10-211~~(7)~~(8), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office; and
 - (b) the oval, box, or other designated voting area on the ballot is marked.
- (6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.
 - (7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.
 - (8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

- (a) the security of the counting process against fraud;
 - (b) the place and time and public notice of each count or recount;
 - (c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;
 - (d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and
 - (e) the keeping of a public record of count or recount proceedings.
- (9) For purposes of this section, “overvote” means an elector’s vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue.”

Section 55. Section 13-15-402, MCA, is amended to read:

“13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

~~(3) If the returns from an election precinct have not been received by the election administrator within 3 to 7 days after an election, the election administrator shall immediately advise the chief election judge.~~

(4)(3) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404.”

Section 56. Section 13-15-404, MCA, is amended to read:

“13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of the secretary’s office a report of the canvass that lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual must be entered in the report ~~in the same place as the votes for other individuals for the same office~~ but must be identified as write-in votes.”

Section 57. Section 13-15-506, MCA, is amended to read:

“13-15-506. Report of the canvass. (1) The secretary of the board shall prepare and file in the official records of the secretary of state’s office a report of the canvass that lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual must be entered in the report ~~in the same place as votes of other individuals for the same office~~ but must be identified as write-in votes."

Section 58. Section 13-16-201, MCA, is amended to read:

"13-16-201. Conditions under which recount to be conducted. (1) A recount must be conducted if:

(a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) a canvassing board petitions for a recount as provided in 13-15-403.

(2) If the election is a school election, the petition is filed with the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

~~(2)~~(3) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator by

certified mail of the filing of the petition, and a recount must be conducted in all precincts in each affected county.”

Section 59. Section 13-16-412, MCA, is amended to read:

“13-16-412. Procedure for recounting paper ballots. To conduct a recount of paper ballots:

(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots voted in the precinct or precincts;

(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2), *except that if the office to be recounted is on a partisan primary election ballot, votes are recounted only on the party ballots that are subject to the recount*; and

(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.”

Section 60. Section 13-16-419, MCA, is amended to read:

“13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, the secretary of state shall file them, shall fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question as corrected by the certificates and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, further action may not be taken.

(b) If there is a change in the results, *the first certificate is void and* a new certificate of election or nomination must be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.”

Section 61. Section 13-17-203, MCA, is amended to read:

“13-17-203. Publication of information concerning voting systems.

(1) Not more than 10 or less than 2 days before an election at which a voting system will be used, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county:

(a) a diagram showing the voting system and *a sample of the ballot arrangement layout* (in newspaper only);

(b) a statement of the locations where voting systems are on public exhibition; and

(c) instructions on how to vote.

(2) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors.”

Section 62. Section 13-17-503, MCA, is amended to read:

“13-17-503. Random-sample audit of vote-counting machines required — rulemaking authority. (1) After unofficial results are available to the public in a federal election, but before the official canvass by the county

board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

- (a) appeared to have at least one overvote;
- (b) appeared to be blank;
- (c) was in a condition that prevented its processing by a vote-counting machine; or
- (d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) Except as provided in subsections (4) and (5), the random-sample audit must include:

- (a) at least 5% of the precincts in each county or a minimum of one precinct in each county, whichever is greater; and
- (b) an election for:
 - (i) one statewide office race, if any;
 - (ii) one federal office race;
 - (iii) one legislative office race; and
 - (iv) one statewide ballot issue if a statewide ballot issue was on the ballot.

(4) The audit may not include:

- (a) a retention election for a judicial candidate; or
- (b) a race in which a candidate was unopposed.

(5) A county is exempt from the postelection random-sample audit requirements if:

- (a) the county does not use a vote-counting machine; or
- (b) the county's unofficial final vote totals for *a ballot issue or for any race*, ~~or ballot issue except precinct committee representative, involving more than one precinct~~ show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.

(6) The secretary of state shall adopt rules to implement the provisions of this part, including but not limited to rules for:

- (a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and
- (b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in this part."

Section 63. Section 13-19-102, MCA, is amended to read:

"13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.

(2) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

~~(4) “Return/verification envelope” means an envelope that contains a secrecy envelope and ballot and that is designed to:~~

~~(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and~~

~~(b) allow it to be used in the United States mail.~~

~~(5)(4) “Secrecy envelope” means an envelope used to contain the elector’s ballot and that is designed to conceal the elector’s ballot and to prevent that elector’s ballot from being distinguished from the ballots of other electors.~~

~~(5) “Signature envelope” means an envelope that contains a secrecy envelope and ballot and that is designed to:~~

~~(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and~~

~~(b) allow it to be used in the United States mail.”~~

Section 64. Section 13-19-106, MCA, is amended to read:

“13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each ~~return/verification~~ *signature* envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector’s address or notify the election administrator of the elector’s correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector’s ballot in a ~~return/verification~~ *signature* envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the ~~return/verification~~ *signature* envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the ~~return/verification~~ *signature* envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box.

(8) Except as provided in 13-19-312, after the close of voting on election day, voted ballots must be counted and canvassed as provided in Title 13, chapter 15.”

Section 65. Section 13-19-206, MCA, is amended to read:

“13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

- (a) an official ballot for each type of election being held on the specified election day;
 - (b) a secrecy envelope;
 - (c) a ~~return/verification~~ *signature* envelope; and
 - (d) complete written instructions, as approved by the secretary of state pursuant to 13-19-205, for mail ballot voting procedures;
- (3) ensure that each packet is:
- (a) addressed to a single individual elector at the most current address available from the official registration records; and
 - (b) deposited in the United States mail with sufficient postage for it to be delivered to the elector's address; and
 - (4) mail the packet in a manner that conforms to postal regulations to require the return, not forwarding, of undelivered packets."

Section 66. Section 13-19-301, MCA, is amended to read:

"13-19-301. Voting mail ballots. (1) Upon receipt of a mailed ballot, the elector may vote by:

- (a) marking the ballot in the manner specified;
- (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
- (c) placing the secrecy envelope in the ~~return/verification~~ *signature* envelope;
- (d) executing the ~~affidavit~~ *affirmation* printed on the ~~return/verification~~ *signature* envelope; and
- (e) returning the ~~return/verification~~ *signature* envelope with the secrecy envelope containing the ballot, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when the marked ballot is received at a place of deposit."

Section 67. Section 13-19-306, MCA, is amended to read:

"13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or the elector's agent or designee may return the elector's ballot on or before election day by either:

- (a) depositing the ~~return/verification~~ *signature* envelope in the United States mail, with sufficient postage affixed; or
- (b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) Except as provided in 13-21-206, in order for the ballot to be counted, each elector shall return it in a manner that ensures it is received prior to 8 p.m. on election day."

Section 68. Section 13-19-307, MCA, is amended to read:

"13-19-307. Places of deposit. (1) (a) The election administrator shall designate the election administrator's office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector or the elector's agent or designee.

(b) If the election administrator's office is not accessible pursuant to 13-3-205, the election administrator shall designate at least one accessible place of deposit.

(2) Prior to election day, ballots may be returned to any designated place of deposit during the days and times set by the election administrator and within the regular business hours of the location.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any designated location functions as a place of deposit only on election day.

(5) Each place of deposit must be staffed by at least two election officials who, *except for election judges serving in elections under Title 20, chapter 20*, are selected in the same manner as provided for the selection of election judges in 13-4-102.

(6) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law.”

Section 69. Section 13-19-308, MCA, is amended to read:

“13-19-308. Disposition of ballots returned in person. Ballots returned in person by the elector or the elector’s agent or designee must be processed as follows:

(1) If returned to the election administrator’s office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector, agent, or designee is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot as provided in 13-19-314; and

(c) deposit the unopened secrecy envelope containing the voted ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator’s office, the election officials on location shall:

(a) keep a log of the names of all electors for whom the officials receive ballots;

(b) deposit the unopened ~~return/verification~~ *signature* envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all voted ballots until they are transported to the election administrator’s office. The transport boxes must then be opened and the ballots handled in the same manner provided for ballots returned by mail.”

Section 70. Section 13-19-309, MCA, is amended to read:

“13-19-309. Disposition of ballots returned by mail. (1) Upon receipt of each ~~return/verification~~ *signature* envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the ~~return/verification~~ *signature* envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-19-314.”

Section 71. Section 13-19-310, MCA, is amended to read:

“13-19-310. Signature verification — procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the ~~return/verification~~ *signature* envelope to the signature on that elector’s registration card or agent designation form or on the signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, agent designation form, or signature card, the election administrator shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the ~~return/verification~~ *signature* envelope is the same as the one whose name appears on the registration card, agent designation form, or signature card, the election administrator shall:

- (a) designate the ballot as a provisional ballot; and
- (b) give notice to the elector as provided in 13-19-313.”

Section 72. Section 13-19-311, MCA, is amended to read:

“13-19-311. Valid ballots — requirements. (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a voted ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the ~~return/verification~~ *signature* envelope;

(b) the elector’s signature on the affidavit on the ~~return/verification~~ *signature* envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day, except as provided in 13-21-206.

(3) If a voted ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(4) A ballot is invalid if:

(a) any identifying marks are placed on the ballot by the elector; or

(b) more than one ballot is enclosed in a single ~~return/verification~~ *signature* or secrecy envelope unless:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) (A) the ~~return/verification~~ *signature* envelope contains ballots from the same household;

(B) each ballot is in its own secrecy envelope; and

(C) the ~~return/verification~~ *signature* envelope contains a valid signature for each elector who has returned a ballot.”

Section 73. Section 13-19-313, MCA, is amended to read:

“13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector’s ~~return/verification~~ *signature* envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator:

(a) is unable to verify the elector's or agent's signature under 13-19-310;

(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311; or

(c) finds that the elector has failed to attest to the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address as provided in 13-19-106.

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

(a) by mail or in person, verify the elector's or agent's signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form;

(b) by mail, facsimile, telephone, or electronic means, provide the address information required under 13-19-106 or correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at the election administrator's office.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) (a) If a mail ballot is returned as undeliverable, the election administrator shall investigate the reason for the return and mail a confirmation notice. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.

(b) If the confirmation notice is returned to the election administrator, the elector must be placed on the inactive list provided for in 13-2-220 until the elector becomes a qualified elector."

Section 74. Section 13-25-101, MCA, is amended to read:

"13-25-101. Nomination of electors — ballot. (1) In the manner and number provided by law, each political party qualified under 13-10-601 shall nominate presidential electors for this state and file with the secretary of state certificates of nomination in a form and by the date prescribed by the secretary of state. ~~However, in~~

(2) *In the event of the death of a candidate for president or vice president after a certificate of nomination has been filed, a new candidate for president or vice president, or both, may be nominated for the affected political party and a new certificate of nomination may be filed with the secretary of state by the date prescribed by the secretary of state.*

(3) *A candidate for election to the office of president or vice president may withdraw from the election by sending a statement of withdrawal to the secretary of state. The statement of withdrawal:*

(a) *must contain all information necessary to identify the candidate and the office sought; and*

(b) *unless filed electronically, must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.*

(4) *A candidate may not withdraw later than the deadline prescribed by the secretary of state for nomination of presidential electors.*

(2)(5) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political

parties, which must be placed on the ballot by one of the methods provided in 13-12-204.

(6) If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 76 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

~~(7)~~(7) The names of candidates for electors of president and vice president may not appear on the ballot.”

Section 75. Section 13-38-201, MCA, is amended to read:

“13-38-201. Election of committee representatives at primary. (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committee representative by a written statement, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct committee representative of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.

(4) If only one person of each sex has been nominated to fill a ~~precinct's~~ *party's precinct* positions, the election administrator may decline to include that ~~precinct's party's precinct~~ election in the primary election. If a ~~precinct's party's~~ *party's precinct* election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that ~~precinct's party's precinct~~ committee representative positions.

(5) *Write-in votes for committee precinct representatives may be counted as specified in 13-15-206(5) only if the individual whose name is written in has filed a declaration of intent as a write-in candidate by the deadline prescribed in 13-10-211(1).*”

Section 76. Repealer. The following sections of the Montana Code Annotated are repealed:

13-2-123. Election administrator to provide list of electors to secretary of state.

13-13-231. Disposition of marked ballot upon receipt by election administrator.

13-21-211. Replacement absentee ballots.

Section 77. Effective date. [This act] is effective January 1, 2012.

Approved April 21, 2011

CHAPTER NO. 243

[HB 107]

AN ACT CLARIFYING THE OBLIGATION TO PAY ROYALTIES TO THE STATE UNDER COAL LEASE CONTRACTS; REQUIRING THAT THE

PAYMENT OF ROYALTIES ON A COAL LEASE BE OF THE ESSENCE IN A LEASE CONTRACT; REQUIRING THAT INTEREST BE PAID ON DELINQUENT COAL ROYALTY PAYMENTS; PROVIDING FOR AN AUDIT, AFTER NOTICE, OF COAL ROYALTIES PAID TO THE STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Obligation to pay royalties under coal lease contract — interest. (1) The obligation arising under a coal lease to pay coal royalties to the department, to deliver coal to a purchaser to the credit of the department, or to pay a portion of the proceeds of the sale of the coal to the department is of the essence in the lease contract.

(2) If the operator under a coal lease fails to pay coal royalties to the department within 120 days after the initial coal produced under the lease is marketed and within 90 days for all coal produced and marketed thereafter, the unpaid royalties must bear interest at the legal rate of interest authorized under 31-1-106 from the date due until paid. The operator may remit semiannually to the department the aggregate of 6 months' royalties if the aggregate amount is less than \$50 and annually if the aggregate amount is less than \$10.

(3) An action for failure to make payments under the lease or seeking payments under this section must be filed in the district court for the county in which the coal mine is located, and that court has jurisdiction over any actions brought under this section. The prevailing party in a proceeding brought under this section is entitled to recover court costs and reasonable attorney fees.

(4) This section does not apply if the department has elected to take the owner's or assignee's proportionate share of production in kind or if there is a dispute as to the title to the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

Section 2. Audit — notice — action to compel payment. (1) Except as provided in subsection (2), the department may, within 5 years of the filing of a report pursuant to 77-3-317, commence an audit of a lessee's or former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(2) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalties are due.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 3, part 3, and the provisions of Title 77, chapter 3, part 3, apply to [sections 1 and 2].

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 April 21, 2011